VOLUME I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1967

No. 23

PATRICIA WALDRON, ETC., PETITIONER,

vs.

CITIES SERVICE CO.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 3, 1966

CERTIORARI GRANTED JANUARY 16, 1967

SUPREME COURT OF THE UNITED STATES

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INDEX

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VOLUME IV

United States Court of Appeals

FOR THE SECOND CIRCUIT

PATRICIA WALDRON, as executrix of the last will and testament of GERALD B. WALDRON, deceased,

Plaintiff-appellant,

—against—

CITIES SERVICE CO.,

Defendant-appellee.

APPENDIX TO BRIEF OF PLAINTIFF-APPELLANT

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United States Court of Appeals

FOR THE SECOND CIRCUIT

PATRICIA WALDRON, as executrix of the last will and testament of GERALD B. WALDRON, deceased,

Plaintiff-appellant,

—against—

CITIES SERVICE CO.,

Defendant-appellee.

Statement Under Rule 15(b)

The action was commenced by the filing of a complaint on June 11, 1956. Named defendants were British Petroleum Co., Ltd., Cities Service Co., Socony Mobil Oil Co., Inc., Standard Oil Co. of California, Standard Oil Co. (New Jersey), Gulf Oil Corp. and Texaco, Inc. On May 6, 1959, defendant Gulf Oil Corp. was dismissed by stipulation. An amended complaint was served and filed on July 12, 1963. No defendant has answered the complaint.

Depositions of plaintiff, Gerald B. Waldron, and his associates, Richard Nelson, James Zoes, James Bentley and Addison Brown were commenced on September 10, 1956 and completed on May 31, 1962. Pursuant to an order, dated July 10, 1956, plaintiff has been stayed from initiating discovery proceedings until five days after answers to the complaint are served.

On November 1, 1963, the defendants other than Cities Service Co. moved for summary judgment. This motion was denied in an opinion by Judge Herlands on June 23, 1964.

Statement Under Rule 15(b)

On April 8, 1960, defendant, Cities Service, moved for summary judgment dismissing the complaint as to it. A memorandum opinion by Judge William B. Herlands was entered on March 30, 1961 postponing the decision of the summary judgment motion pending appropriately supervised discovery pursuant to Rule 56(f). On May 8, 1963, plaintiff moved under Rule 56(f) for further documentary discovery and further oral examination of Cities Service. On June 23, 1964, an opinion by Judge Herlands again postponed Cities' motion for summary judgment and granted plaintiff additional discovery under Rule 56(f). Following the production of documents and depositions of three Cities' officers, Cities again renewed its motion for summary judgment in October 1964. Plaintiff again moved for additional discovery under Rule 56(f). On September 8, 1965, an opinion and order of Judge Herlands was filed which granted Cities' motion for summary judgment and denied plaintiff's motion for further discovery. Judgment for Cities was entered on September 14, 1965, and plaintiff's notice of appeal was filed on October 11, 1965.

On November 9, 1964, plaintiff, Gerald B. Waldron, died. His executrix, Patricia Waldron, was substituted as plaintiff on February 15, 1965.

(12122)

Judgment

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110-223

PATRICIA WALDRON, as executrix of the last will and testament of GERALD B. WALDRON, deceased,

Plaintiff,

—against—

BRITISH PETROLEUM CO., LTD.,
CITIES SERVICE CO.,
SOCONY MOBIL OIL CO., INC.,
STANDARD OIL CO. OF CALIFORNIA
STANDARD OIL CO. (NEW JERSEY),
TEXACO, INC.,

Defendants.

A motion for summary judgment in this action in favor of the defendant Cities Service Co. and against the plaintiff Patricial Waldron, as executrix of the last will and testament of Gerald B. Waldron, deceased, having been made by the defendant Cities Service Co., and having come on for hearing before the Court, Honorable William B. Herlands, District Judge, presiding, and argument having been heard and a decision having been duly rendered, and no just reason existing for the delay of the entry of this judgment,

Judgment

IT IS ORDERED AND ADJUDGED

that the plaintiff's complaint as against the defendant Cities Service Co. be dismissed on the merits and that the defendant Cities Service Co. recover from the plaintiff, Patricial Waldron, as executrix of the last will and testament of Gerald B. Waldron, deceased, its cost of this action.

Dated at New York, New York, this 13th day of September, 1965.

s/ WILLIAM B. HERLANDS
U.S.D.J.

JUDGMENT ENTERED 9-14-65
s/ JAMES E. VALECHE
Clerk

U.S. District Court
Filed
Sep 13 1965
S.D. of N.Y.

(12106)

Opinion, Dated September 8, 1965

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

#31600

Civil Action No. 110–223

[SAME TITLE]

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Opinion, Dated September 8, 1965

(12107)

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HERLANDS, *District Judge:*

The court has before it two motions. The first is the renewal of a motion by defendant Cities Service Co.—initially made in 1960—for summary judgment under Rule 56(e) of the Federal Rules of Civil Procedure on the ground that plaintiff has failed, in his affidavits, to "set forth specific facts showing that there is a genuine issue for trial."

The second motion is by plaintiff* for further discovery, pursuant to Rule 56(f) of the Federal Rules of Civil Procedure.

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* On February 9, 1965, pursuant to Rule 25(a) of the Federal Rules of Civil Procedure, Patricia Waldron was substituted in her capacity as executrix of the last will and testament of the deceased plaintiff, Gerald B. Waldron, as plaintiff in this action.

Opinion, Dated September 8, 1965

The relevant facts were detailed and analyzed by this court at an earlier stage of this litigation. *Waldron* v. *British Petroleum Co.*, 231 F. Supp. 72 (S.D.N.Y. 1964). The facts will now be reiterated only to the extent necessary for the disposition of the motions at bar.

(12108)

Defendant Cities Service Co. (hereinafter Cities) first moved for summary judgment on April 8, 1960. In a memorandum opinion by this court, filed March 30, 1961, Cities' motion was adjourned for the purpose of enabling plaintiff to conduct limited pre-trial discovery. At that time, this court said:

> 1. It is doubtful in the extreme whether plaintiff has shown that there is a genuine issue as to any material fact with respect to his claim against the defendant Cities Service Co.
>
> 2. The naming of Cities Service Co. as a defendant herein when the complaint was drawn was based only on suspicion and on a gossamer inference drawn from the mere sequence of events.
>
> 3. But for the prevailing strict policy in this circuit with respect to the invocation of the summary judgment procedure, the court would have granted the motion. This court has examined virtually every reported summary judgment decision rendered in this circuit since *Arnstein* v. *Porter*, 154 F.2d 464 (2d Cir. 1946), over one thousand in number. The rationale and philosophy of *Arnstein* v. *Porter* have not been attenuated by the subsequent course of decisions.
>
> 4. In view of (a) the surface complexity of the case, (b) the indirect law enforcement aspects

of even this private antitrust case, (c) the very extensive pre-trial examinations of the plaintiff already conducted by the defendants and the complete absence of any pre-trial examination of any defendant by the plaintiff—it would appear to be fair to postpone a decision of the summary judgment motion and to afford the plaintiff an opportunity to engage in appropriately supervised discovery and related pre-trial proceedings.

5. Because of plaintiff's claim against the defendant Cities Service Co. is, judged by the entire available record, so insubstantial, the plaintiff will not be (12109) given carte blanche authority to conduct untrammeled pre-trial proceedings. Such proceedings will be closely regulated. The usual Federal rule permitting fishing expeditions will be curtailed. A just and workable balance will be maintained between the respective interests of the opposing parties.

Following plaintiff's exhausting the discovery permitted pursuant to an order filed May 4, 1961,—limiting plaintiff to the examination of George H. Hill, Jr.—Cities again renewed its motion for summary judgment on May 13, 1963. At that time, plaintiff also moved for further discovery under Rule 56(f).

In deciding the 1963 renewal of Cities' motion for summary judgment, the court no longer was to be controlled by the rather restrictive interpretation of Rule 56 articulated by this circuit in *Arnstein* v. *Porter, supra.* Instead, the court was to be guided by two recent developments with respect to Rule 56, which had taken place since the March 30, 1961 decision herein.

The first development was the amendment to Rule 56(e), effective July 1, 1963. Although the central target of the amendment was to overcome a judicial gloss placed

upon Rule 56 in the Third Circuit which had impaired the utility of the summary judgment device, 6 Moore, Federal Practice 149 (1964 Supp.), the amendment was also aimed at the line of decisions in the Second Circuit, following *Arnstein* v. *Porter*, which reflected a (12110) strict policy toward the granting of summary judgment. See Wright, *Rule 56(e): A Case Study On The Need For Amending The Federal Rules*, 69 Harv. L. Rev. 839, 856 (1956); *United States* v. *Manufacturers Casualty Ins. Co.*, 158 F. Supp. 319, 321 (S.D.N.Y. 1957); *Vermont Structural Slate Co.* v. *Tatko Bros. Slate Co.*, 134 F. Supp. 4, 5 (N.D.N.Y. 1955), *aff'd* 233 F.2d 9 (2d Cir. 1956).

The second development was exemplified by the decision in *Dressler* v. *MV Sandpiper*, 331 F.2d 130 (2d Cir. 1964). In that case the court of appeals, in an opinion written by Judge Kaufman, undertook to resolve any doubt as to the effect of the 1963 amendment on the Second Circuit doctrine that had evolved from *Arnstein* v. *Porter*.

Judge Kaufman first made it clear that the amendment was aimed at changing the rule in this circuit as well as that of the Third Circuit. He then formulated, at 133, the criterion to be applied under the amendment in passing upon a motion for summary judgment:

> If the present case were to be decided under Civil Rule 56 as amended, it would thus seem clear that respondent's vague and conclusory allegations . . . would not be sufficient to forestall the award of summary judgment. The highly general assertions of . . . [the] answer . . . , buttressed by no *specific facts* or *evidentiary data*, are hardly the sort of *concrete particulars* which the amendment sought to require. [Emphasis added.]

Opinion, Dated September 8, 1965

(12111)

Recent cases i tnhis circuit which have reversed the granting of summary judgment have not manifested any deviation from the standards enunciated in *Dressler*. See *United States* v. *Fair & Co.*, 342 F.2d 383, 385 (2d Cir. 1965); *Miller* v. *General Outdoor Advertising Co.*, 337 F.2d 944, 948 (2d Cir. 1964). For example, the court stated in *Miller*, at 948:

> We do not, by our disposition of this case, weaken the force of our recent holdings that the summary judgment procedure should be used to pierce the allegations of pleadings and screen out sham issues of fact. See, e.g., Dressler v. MV Sandpiper. . . .

In an opinion, reported 231 F. Supp. at 72, this court, in order to enable plaintiff to meet, if possible, the new demands of Rule 56(e), further adjourned Cities' motion and granted plaintiff's motion for further discovery, permitting examination of Burl S. Watson, A. P. Frame, and J. E. Heston. In allowing this further discovery, the court stated, at 94:

> Since plaintiff must—if he is to oppose successfully Cities Service's motion for summary judgment—eventually submit "specific facts" which "would be admissible in evidence" [Rule 56(e)], plaintiff should be given another opportunity to conduct pretrial discovery.

Plaintiff has now completed the examinations of Watson, Frame and Heston. Cities again renews its motion for summary judgment.

The single issue before the court relating to Cities' motion for summary judgment, is whether plaintiff's dis-

covery has (12112) unearthed a "genuine issue [of fact] for trial" where nothing had existed before but "suspicion" and "gossamer inference drawn from the mere sequence of events."

The sequence of events to which plaintiff points as the basis of linking Cities with the alleged conspiracy is that in August, 1952, W. Alton Jones, president of Cities, allegedly expressing great interest in the prospects of reactivating Iranian Oil, flew to Iran to confer with Dr. M. Mossadegh, the prime minister of Iran. Then,

> in late September, 1952, Jones returned to the United States. He appeared to have suffered a complete change of heart and mind. He refused to have any further dealings with plaintiff. Ostensibly he lost all interest in purchasing or managing Iranian Oil [231 F. Supp. at 79-80].

Plaintiff attributes this "change of heart and mind" to the fact that somewhere between late August and early September, 1952, Cities joined the alleged conspiracy. Plaintiff earlier speculated that the alleged incentive for Cities to join the conspiracy was the promise of a contract between Cities and Gulf Oil Co. for oil from Kuwait, signed shortly after the above-noted events, or an opportunity advanced to Cities by the other defendants to participate in the oil consortium formed several years after the above-noted events.

The examinations of Watson, Frame and Heston have not produced any evidence from which a trier of fact would be permitted (12113) to infer that the Kuwait oil contract and participation by Cities in the consortium were consideration for Cities' allegedly dropping its interest in

Iranian oil and joining the alleged conspiracy against plaintiff. On the contrary, the record, as it now stands, conclusively establishes that both the Kuwait contract and participation in the consortium had no connection whatever with the course of Cities' conduct with regard to Iranian oil.

Plaintiff's major premise throughout this litigation with regard to Cities has been that, for some reason, Cities did a complete turnabout with respect to its interest in Iranian oil. Not only has the evidence thus far adduced demonstrated that the alleged turnabout was not motivated for the reasons originally advanced by plaintiff, but the evidence has brought into serious doubt the existence of the major premise itself—a turnabout or change in attitude. Rather, the evidence persuasively demonstrates a consistent course of conduct by Cities with regard to Iranian oil at all times.

Granting, however, arguendo, that there is an issue of fact as to whether Cities inexplicably changed its mind about Iranian Oil, such an issue is insufficient as a matter of law to constitute a "genuine issue for trial." From a possible inference that there was an unexplained change of mind on Cities' (12114) part, a trier of fact would not be permitted to draw the further inference that the change of mind was caused by a conspiratorial connection between Cities and the alleged co-conspirators.

The crucial facts which plaintiff must produce in order to survive Cities' motion for summary judgment are evidentiary data tending to prove that Cities became a party to the alleged conspiracy. These evidentiary data have not been forthcoming. Even the "gossamer inference" that existed in 1961 has become attenuated into nothingness as

a result of the pre-trial record developed during the last four years.

Plaintiff has been permitted to examine all of those persons, still living, who accompanied Jones to Iran in August, 1952 and who would be able to link Jones' activities at that time with the alleged conspiracy.

The examinations, however, have done no such thing. Plaintiff maintains, however, that—so long as there is the slightest question as to Jones' motive in allegedly abandoning his interest in Iranian oil—there is a material issue of fact remaining to be tried and, hence, that defendant's motion for summary judgment must be denied.

In so arguing, plaintiff relies heavily on *Poller* v. *Columbia Broadcasting System, Inc.*, 368 U.S. 464 (1962). Although (12115) *Poller* antedates the 1963 amendment to Rule 56(e) of the Federal Rules of Civil Procedure, it is unnecessary for the disposition of the present case to determine whether the result in *Poller* would have been the same after the 1963 amendment.

The facts in *Poller*, simplified for purposes of the present motion, are as follows. Plaintiff owned a broadcasting station in Milwaukee, affiliated with the Columbia Broadcasting System (CBS) network. Plaintiff claimed that, as part of a conspiracy to drive plaintiff out of the Milwaukee broadcasting market, CBS purchased the plaintiff's only competitor in Milwaukee and then cancelled its (CBS's) affiliation agreement with plaintiff (pursuant to an option clause in the affiliation agreement), ultimately causing plaintiff, no longer able to compete, to liquidate at distress prices.

The *only* question was whether CBS's purchase of plaintiff's competitor and cancellation of the affiliation agree-

ment was for an illegal purpose or motivated by legitimate business judgment. The facts of purchase, cancellation and their having directly caused injury to plaintiff were not disputed.

In holding that the granting of summary judgment was improper in *Poller,* the court stated, at 473:

> We believe that summary procedures should be used sparingly in complex antitrust litigation where motive and intent play leading roles, the proof is largely in the hands of the alleged conspirators, and hostile (12116) witnesses thicken the plot. It is only when the witnesses are present and subject to cross-examination that their credibility and the weight to be given their testimony can be appraised. Trial by affidavit is no substitute for trial by jury which so long has been the hallmark of "even handed justice."

Plaintiff also relies upon *Cross* v. *United States,* 336 F.2d 43 (2d Cir. 1964), a decision which post-dates the 1963 amendment to Rule 56(e). In that case, as in Poller, the district court's granting of summary judgment was reversed as "particularly inappropriate where 'the inferences which the parties seek to have drawn deal with questions of motive, intent and subjective feelings and reactions.'" But in *Cross,* as in *Poller,* the *only* issue was to determine the purpose or motivation behind certain undisputed acts.

Plaintiff's argument (authority for which it relies upon *Poller, Cross,* and other similar cases) is essentially this: if plaintiff can raise an issue of fact as to whether a defendant who had been, independently of plaintiff, pursuing a course of conduct harmonious with that of plaintiff—and incidentally inconsistent with that of a conspiracy

directed against plaintiff—, reversed that course of conduct so that it then became inconsistent with plaintiff's interests and consistent with those of the conspiracy, then plaintiff has an action for conspiracy against that defendant which is immune against a motion for summary judgment.

(12117)

In all of those cases relied upon by plaintiff, however, where the credibility of witnesses was in issue, all that stood between plaintiff and a victorious verdict was a favorable determination by the fact trier of the sole issue of credibility.

However, in the present case, the issue of credibility (if there be one) is whether Cities did change its attitude toward Iranian oil. If, arguendo, the jury should find that there was a switch in Cities' attitude, such a finding—without further evidence linking Cities to the alleged conspiracy and the alleged injury to plaintiff—would be insufficient as a matter of law to support a verdict in plaintiff's favor.

On that evidence alone Cities would be entitled to a directed verdict at a trial. It is now entitled to summary judgment. *Schwartz* v. *Associated Musicians of Greater N.Y., Local 802*, 340 F.2d 228 (2d Cir. 1964); *Dressler* v. *MV Sandpiper, supra*; *Scolnick* v. *Lefkowitz*, 329 F.2d 716 (2d Cir.), *cert. denied*, 379 U.S. 825 (1964).

Although the court has determined that there is not a "genuine issue for trial" and that Cities is thus entitled to summary judgment, the court will enter summary judgment only "if appropriate." Fed. R. Civ. P. 56(e).

The next question, therefore, is whether summary judgment dismissing the complaint against Cities is to be entered (12118) now or whether Cities' motion for summary judgment is to be again postponed in order to grant plaintiff further discovery under Rule 56(f). See Kaplan, Amendments of the Federal Rules of Civil Procedure, 1961-1963 (II), 77 Harv. L. Rev. 801, 826-27 (1964).

In view of the dual policies of favoring private antitrust actions, see, *e.g., J. I. Case Co.* v. *Borak,* 377 U.S. 426, 432-33 (1964); *Monarch Life Ins. Co.* v. *Loyal Protective Life Ins. Co.,* 326 F.2d 841, 845, 846 n. 2 (2d Cir. 1963), *cert. denied,* 376 U.S. 952 (1964), and of protecting a plaintiff's right to his day in court, this court has heretofore granted plaintiff's motions under Rule 56(f). See the earlier decision of this court in this litigation, 231 F. Supp. at 94.

In so doing, the court has been equally aware of a countervailing policy against the undue harassment of a litigant through a spurious law suit. A defendant, no less than a plaintiff, is entitled to the equal protection of the court.

The case against Cities has gone far enough. More than five years have elapsed since Cities first made this motion for summary judgment. Plaintiff has had ample time and opportunity to discover and present "concrete particulars" demonstrating that there is a genuine issue for trial. At this late day plaintiff still cannot point to "specific facts or evidentiary data." (12119) *Dressler* v. *MV Sandpiper, supra* at 133. The court "is convinced to a legal certainty" that plaintiff has no case against Cities. *Cf. Arnold* v. *Troccoli,* 344 F.2d 842, 845 (2d Cir. 1965).

Opinion, Dated September 8, 1965

Defendant Cities' motion for summary judgment dismissing the complaint as to it is hereby granted.

Plaintiff's motion for further discovery under Rule 56(f) is hereby denied.

So ordered.

WILLIAM B. HERLANDS
U. S. D. J.

Dated: New York, N. Y.,
September 8, 1965.

Order, Dated July 9, 1964

(11918)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Defendant Cities Service Company having moved, by Notice of Motion dated April 8, 1960, for an Order, pursuant to Rule 56 of the Federal Rules of Civil Procedure, for summary judgment in its favor dismissing plaintiff's complaint as against it; and plaintiff having cross-moved, by Notice of Motion dated May 8, 1963, for an Order, pursuant to Rule 56(f) of the Federal Rules of Civil Procedure, for the production of documents by and examination by oral deposition of defendant Cities Service Company in aid of plaintiff's opposition to said motion for summary judgment; it is hereby

Order, Dated July 9, 1964

ORDERED that said motion for summary judgment be, and the same hereby is, adjourned pending completion of the examination of defendant Cities Service Company by plaintiff pursuant to Rule 56(f) of the Federal Rules of Civil Procedure; and it is hereby further

ORDERED that said cross-motion for discovery be, (11919) and the same hereby is, granted, to the extent indicated in this Order; and it is hereby further

ORDERED that said examination commence on July 23, 1964, and continue from day to day until completed, except as the parties may otherwise agree to suit the convenience of the participants; and it is hereby further

ORDERED that said examination be limited and confined to the following subjects:

(a) The two issues defined in the Court's Order filed May 4, 1961;

(b) Conversations and communications, written or oral, from on or about June 11, 1952, to, on or about, October 1, 1952, between defendant Cities Service Company and any other defendant pertaining to:

(1) Waldron, Brown, Nelson, Bentley, Zoes, or Carter;

(2) The refining, marketing, distributing, producing or managing of Iranian oil;

(3) Plaintiff's proposed deal, contract, agreement or other arrangement with the Iranian Government;

(4) The subject of defendant Cities Service

Company's giving up, terminating, dropping or discontinuing negotiations with the Iranian Government in regard to any of the matters mentioned in item (2) *supra*;

(c) Conversations and communications, written or oral, from on or about June 11, 1952, to, on or about, November 1, 1952, between deponent and any other (11920) Cities Service Company official or employee pertaining to the subjects mentioned in items (1) through (4) of subparagraph (b) *supra*;

(d) Conversations and communications, written or oral, from on or about June 11, 1953, to, on or about, September 30, 1953, between defendant Cities Service Company and any other defendant pertaining to the subject of negotiations between plaintiff and Richfield Oil Corporation concerning the purchase of Iranian oil;

(e) Conversations and communications, written or oral, from on or about June 11, 1953, to, on or about, September 30, 1953, between deponent and any other official or employee of defendant Cities Service Company pertaining to the subject set out in subparagraph (d) *supra*;

and it is hereby further

ORDERED that said examination of defendant Cities Service Company be by Burl S. Watson, A. P. Frame, and J. E. Heston in that order, except as the parties may otherwise agree to suit the convenience of the participants; and it is hereby further

ORDERED that defendant Cities Service Company produce to plaintiff, ten days in advance of said examination,

copies of all documents not heretofore produced to plaintiff in the possession or control of defendant Cities Service Company which relate to the subjects upon which defendant Cities Service Company is to be examined as set forth in the fourth ordering (11921) paragraph *supra*; and it is hereby further

ORDERED that, within thirty (30) days following the conclusion of said examination, plaintiff and defendant Cities Service Company may submit to the Court any of such documents or portions of such depositions for final consideration of the pending motion.

/s/ WILLIAM B. HERLANDS
United States District Judge

Dated: New York, N.Y.
July 9, 1964

Opinion, Dated June 23, 1964

(11861)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

OPINION No. 30,096

Filed: June 23, 1964

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(11861)

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and

Opinion, Dated June 23, 1964

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HERLANDS, *District Judge:*

Part I.*

The issues raised by defendants' motion to dismiss plaintiff's antitrust action and for summary judgment[1] have such far ranging implications that an extensive recital of the facts is unavoidably necessary.

Opinion, Dated June 23, 1964

FACTUAL BACKGROUND

The controversy at bar originates out of the dispute between Great Britain and Iran over the nationalization of Iranian oil. In March and April of 1951, the Iranian Parliament, under the leadership of Dr. Mossadegh, enacted legislation which nationalized the oil industry and thereby abrogated a concession held by the Anglo-Iranian Oil Company (hereinafter "AIOC") pursuant to a 1933 agreement with the (11863) Iranian Government.[2] Cmd. 8425, Explanatory Memorandum, pp. 3-4; Cmd. 8425, No. 1, pp. 9-19; Cmd. 8425, No. 10, pp. 29-31.[3]

The nationalization of the oil industry without provision for compensation to AIOC precipitated a serious international dispute between Iran and Great Britain. This eventually led to the severance of diplomatic relations between those two countries.

On May 18, 1951, the United States expressed deep concern about this dispute and urged the parties to solve the dispute through negotiation. State Dept. Bull., May 28, 1951, p. 851.

Thereafter, the United States made repeated attempts to effectuate a settlement.[4]

It was not until the fall of 1951 that plaintiff or any of his associates became interested in Iranian oil. In November of that year, Richard S. Nelson, who was at the time acting as an export manager for local firms in Denver, Colorado (Tr. 6478),[5] received a letter from James A. Raphael, an Iranian resident, asking him whether he knew anyone who would be interested in bartering sugar for oil. Tr. 6504.

Nelson, who had experience neither in the food nor

oil businesses, approached plaintiff Waldron in the hope that (11864) Waldron would have some connections in the food industry. Tr. 6506-6507.

Nelson and Waldron soon found it impracticable to effectuate such a barter. Instead, they became interested in the direct sale of oil.[6]

Some preliminary efforts were made to locate purchasers for the oil. Tr. 6605-6619. Much correspondence was exchanged with Raphael about purchasing the oil from Iran and transporting it to this country. See SONJ Exs. 15, 27A, 29, 71 for id.

Waldron and Nelson were aware of the delicate international problems posed by the Anglo-Iranian dispute. On January 28, 1952, Waldron wrote to United States Senator Johnson of Colorado to ascertain the attitude of the State Department with respect to the sale of Iranian oil in this country. SONJ Ex. W-115 for id.

Approximately one week later, Senator Johnson forwarded to Waldron, without comment, the reply of the State Department which, in relevant part, was as follows:

> "In the Department's opinion the British-Iranian oil controversy is basically a matter for negotiation between the two Governments directly concerned. Because of our vital interest in this matter the United States Government continues to use its influence toward finding a solution of this difficult problem. In line therewith, we welcome the initiative of the International Bank for Reconstruction and Development which is (11865) currently trying to work out a plan for settlement of the controversy and are extending every appropriate

assistance in such efforts as the Bank is making in this regard.

"The Department is of the opinion that the injection of any non-official individual, group or organization into this dispute might prejudice the ability of the parties concerned in reaching a satisfactory solution. Accordingly, the Department believes that non-official entities should refrain from getting involved in the dispute." SONJ Ex. 3 for id.

Knowledge of the State Department's attitude toward the Iranian problem in no way dissuaded the efforts of plaintiff to procure a contract for the sale of Iranian oil.[7] On February 13, 1952, Nelson sent a coded cablegram to Raphael containing the admittedly false information that he had cash purchasers for two million tons of oil. SONJ Ex. 37 for id.[8]

On February 19, 1952, Raphael communicated this false information to Dr. Abuzia, the authorized foreign sales representative for the National Iranian Oil Company (hereinafter "NIOC"). SONJ Ex. 39 for id.

At the time that these false representatives were being passed on to Iranian officials, representatives of the World Bank were in Tehran attempting to work out a solution to the Anglo-Iranian dispute. International Bank for Reconstruction and Development Press Release No. 285, April 3, 1952, p. 6.[9]

(11866)

From this point forward and continuing until the time that the contract was actually negotiated, the Waldron group and Raphael engaged in a correspondence that con-

tained patent misrepresentations and none-too-subtle hints of bribery.

Shortly after receiving the false information about the interested oil purchasers, NIOC (which was the Iranian Government instrumentality responsible for operating the nationalized oil industry) indicated to Raphael that it was interested in a more extensive deal encompassing a five-year contract for fourteen million tons of oil.

Raphael drafted an outline of such a contract and sent one copy to NIOC and the other to Nelson. See SONJ Exs. 8, 9, 40 for id.

On March 3, 1952, Nelson cabled Raphael the false information that the five-year, fourteen million-ton oil contract was acceptable to his "principals." SONJ Ex. B-1045 for id.[10]

When the World Bank's mission returned to Iran from London on March 5, "New complexities . . . devolped in regard to an Iranian proposal that Iran should have an option to sell directly on world markets substantial quantities of crude oil and products." International Bank for Reconstruction and Development Press Release No. 285, April 3, 1952, p. 8.[11]

(11867)

Several days after he had cabled Raphael in regard to the five-year contract, Nelson received a letter which injected a new and seemingly corruptive force into the negotiations. Raphael wrote Nelson to "Explain to your friend that you'll have to spend about *one per mille* [sic] to the persons who will assist us to realize signing this contract. You know Dick, in Iran for getting such a tremendous contract under way, one should pay left and right to the

officials who will have some say in the matter." SONJ Ex. 4 for id.

Thereafter, the correspondence continued in the same malodorous manner. On March 31, April 4 and April 8, 1952, additional false information was sent to Raphael. SONJ Exs. 64, 67 for id.; see SONJ Ex. 13 for id.[12]

On April 16 and May 1, 1952, Raphael reminded Nelson about the necessity of bringing enough money to meet the expenses referred to in his previous correspondence. SONJ Exs. 13, 83 for id.

At this point, the Waldron group decided that the time had come for Waldron and Nelson to fly to Iran and consummate the contract. After discussing the situation among themselves, the Waldron group decided that the term "oil" should be omitted in plaintiff's and Nelson's passport applications. Tr. 1114. The relevant portion of their letters to the State Department's Passport Agency read:

(11868)

> "My trip is for both business and pleasure, and I expect to visit several countries in Europe, as well as the Middle East. The business portion of my trip will be primarily concerned with making connections for obtaining sources of raw materials."

SONJ Exs. B-108, B-109 for id.

Waldron claims that, upon arrival in Iran, he and Nelson told Raphael that there was to be no bribery involved in procuring the contract. Tr. 699. However, they advised Raphael not to tell anyone about their interest in oil. Consequently, in responding to an inquiry from an official of the American Embassy, Raphael falsely replied

that Waldron and Nelson "were there on other business than oil." Tr. 1108-09.

Finally, on May 25, 1952, Waldron and Nelson obtained the highly desired contract.[13]

Upon their return to the United States, they informed Senator Johnson and the State Department of their activities. They stated that they believed their action to "be for the best interests of the United States, Iran and the entire Western world." SONJ Exs. N-113, W-114 for id.

Starting in June of 1952, plaintiff and his associates (which by this time included James E. Zoes, who had been brought into the group while Nelson and plaintiff were in Iran) made serious efforts to both implement and assign the contract. Zoes began to investigate the possibility of buying or renting tankers. Tr. 9109-11.[14]

(11869)

At about this time, an offer to sell the oil to some of the larger oil companies was made and quickly rejected. Tr. 8425-29, 8619.

On June 6, 1952, the Waldron group decided to concentrate their efforts on the First National Oil Company of Long Island (hereinafter "FNOC"). The negotiations with FNOC soon bogged down, however, because that company was reluctant to be linked publicly with Iranian oil (SONJ Ex. B-998 for id.) and because FNOC thought that the terms of the contract required substantial revision. See SONJ Ex. B-148 for id.

More important, however, was the fact that, on June 11, 1952, the Waldron group made an important contract with the Cities Service Company. See SONJ Ex. B-254 for id; Tr. 8842.[15]

Several meetings followed between Cities Service officials and several members of the Waldron group. These meetings culminated in an oral agreement by the terms of which (1) Waldron and Nelson were to attempt to procure an invitation for W. Alton Jones, president of Cities Service Company, from the Iranian Government, and (2) in the event that Waldron and Nelson succeeded in obtaining the invitation and Cities Service thereafter secured a contract with the Iranians to manage and operate the Iranian oil industry, the Waldron group was to (11870) receive as its compensation one or two cents per barrel of oil run through the Abadan refinery or taken as crude oil from the wells. Tr. 2186, 2223-24; SONJ Ex. W-343 for id.

In July, 1952, Waldron and Nelson again flew to Iran. They secured the coveted invitation in writing. Ex. B attached to Affid. of Samuel Lane, sworn to May 6, 1960. The invitation, dated July 26, 1952, written in French, was addressed to W. Alton Jones, president of Cities Service Company and signed by Dr. M. Mossadegh, the prime minister of Iran.[16]

In August, 1952, Jones and his entourage flew to Iran. Jones attempted to keep his trip to Iran highly secret. But soon after his arrival, word leaked out that he was there to negotiate with respect to Iranian oil.

Discovery of the nature and purpose of his visit caused excitement and anxiety in British oil and governmental circles. See, *e.g.*, N.Y. Times, Aug. 26, 1952, p. 3, col. 5; Business Week, Sept. 27, 1952, p. 29; Oil and Gas Journal, Sept. 29, 1952, pp. 155-56.

Despite threats of harassment and litigation, Jones dis-

played strong interest in Iranian oil. See N.Y. Times, Sept. 19, 1952, p. 8, col. 3.

In late September, 1952, Jones returned to the United States. He appeared to have suffered a complete change of (11871) heart and mind. He refused to have any further dealings with plaintiff. Ostensibly he lost all interest in purchasing or managing Iranian oil.[17]

On October 22, 1952, Iran severed diplomatic relations with Great Britain.[18]

On December 6, 1952, the State Department expressed its attitude toward the purchase of oil from Iran by American nationals or American firms, in a press release declaring:

> "The question of moving relatively small quantities of oil or oil products has seemed to us as of minor importance in comparison with the necessity to find some solution which could drive to the heart of the matter and result in resumption of large-scale movement of Iranian oil. . . .
>
> "Under present circumstances, this Government believes that the decision whether or not such purchases of oil from Iran should be made must be left to such individuals or firms as may be considering them, and to be determined upon their own judgment." State Dept. Bull., Dec. 15, 1952, p. 946.

In December of 1952, although plaintiff had still been unable to locate purchasers for the Iranian oil—allegedly because of defendants' conspiracy—NIOC extended the impending expiration date of its contract with plaintiff until June of 1953. SONJ Ex. W/N-557 for id.[19]

In January, 1953, the Sun Oil Company rejected an offer

for the sale of oil made by the Waldron group. SONJ Ex. C-669 for id.

(11872)

Finally, in June, 1953, the Waldron group attempted to sell the oil to the Richfield Oil Company. However, even before the group's effort could be thwarted by the alleged conspiracy, the June 30, 1953 deadline of the NIOC contract expired.[20]

GROUNDS OF DEFENDANTS' MOTION

The motions presently before the Court rest solely upon facts culled from the writings and sworn testimony of plaintiff and his associates and from official publications.[21]

Defendants have moved for summary judgment and to dismiss on the following grounds:

1. that plaintiff lacked the requisite "business or property" interest prescribed by § 4 of the Clayton Act;

2. that any injury to plaintiff's claimed "business or property" was indirect and secondary, and therefore cannot support an action under § 4 of the Clayton Act; and

3. that the Court should not lend its power to assist this plaintiff because his conduct and his oil contract were (a) contrary to the best interests of the United States, (b) contrary to United States foreign policy and (c) tainted by fraud and illegality and repugnant to public morality.[22]

Opinion, Dated June 23, 1964

WAS PLAINTIFF INJURED IN HIS BUSINESS OR PROPERTY?

Defendants contend that the undisputed facts demonstrate that plaintiff lacked the "business or property" interest (11873) requisite for an action under § 4 of the Clayton Act, 15 U.S.C. § 15.

The gist of plaintiff's counterargument is that he was or could have been in the "business" of dealing in Iranian oil and that defendants destroyed that business or prevented plaintiff from engaging in that business before it was soundly established.

Under § 4 of the Clayton Act, it is as unlawful to prevent a person from engaging in a business as it is to drive a person out of business. *Pennsylvania Sugar Refining Co.* v. *American Sugar Refining Co.*, 166 Fed. 254 (2d Cir. 1908); *Delaware Valley Marine Supply Co.* v. *American Tobacco Co.*, 184 F. Supp. 440, 443 (E.D. Pa. 1960), *aff'd*, 297 F.2d 199 (3d Cir. 1961), *cert. denied*, 369 U.S. 839 (1962); Timberlake, *The Legal Injury Requirements And Proof Of Damages In Treble Damage Actions Under The Antitrust Laws*, 30 Geo. Wash. L. Rev. 231, 233 n. 10 (1961).

The legal content of "business or property," for the purpose of § 4 of the Clayton Act, is flexible.

In the absence of a statutory specification of the attributes of "business or property," the courts have spelled out on an ad hoc basis the factual situations that measure up to the required showing of "business or property."

(11874)

Where, as here, a person alleges that he has been prevented from engaging in a business, he must show that he

had the intention and preparedness to engage in that business. See *Triangle Conduit & Cable Co.* v. *National Elec. Prods. Corp.*, 152 F.2d 398 (3d Cir. 1945); *Pennsylvania Sugar Refining Co.* v. *American Sugar Refining Co., supra.*

In determining whether a plaintiff has proved the requisite intention and preparedness, the courts have looked for varying combinations of the following typical elements:

1. The background and experience of plaintiff in his prospective business. See *Peller* v. *International Boxing Club*, 227 F.2d 593 (7th Cir. 1955); *Rossman* v. *Pullman Co.*, 15 F.Supp. 325 (S.D.N.Y. 1936);

2. Affirmative action on the part of plaintiff to engage in the proposed business. See *Pennsylvania Sugar Refining Co.* v. *American Sugar Refining Co., supra; Washington Professional Basketball Corp.* v. *National Basketball Ass'n*, 147 F.Supp. 154 (S.D.N.Y. 1956);

3. The ability of plaintiff to finance the business and the purchase of equipment and facilities necessary to engage in the business. See *Volasco Prods. Co.* v. *Lloyd A. Fry Roofing Co.*, 308 F.2d 383, 395-96 (6th Cir. 1962), *cert. denied*, 372 U.S. 907 (1963); *Deterjet Corp.* v. *United Aircraft Corp.*, 211 F.Supp. 348 (D. Del. 1962); *Pastor* v. *American Tel. & Tel. Co.*, 76 F.Supp. 781 (S.D.N.Y. 1940);

(11875)

4. The consummation of contracts by plaintiff. See *North Texas Producers Ass'n* v. *Young*, 308 F.2d 235 (5th Cir. 1962), *cert. denied*, 372 U.S. 929 (1963); *Peller* v. *International Boxing Club, supra.*

Plaintiff contends that he was attempting to engage in

the "oil business" as manifested by his activities in pursuit of various aspects of this business. He points to (a) his attempts to import and sell Iranian oil; (b) his financial interest in a prospective management contract between Cities Service and the Iranians; (c) his advantageous business relationship with NIOC; and (d) his endeavors to assign the NIOC contract. Plaintiff's position is that the aggregation of these features constitutes the requisite "business."

Plaintiff, agreeing that it is appropriate to analyze each of these four aspects separately (see Transcript of Argument of Motion, May 11, 1964, p. 209), claims that such an analysis will demonstrate that each aspect by itself meets the "business or property" requirement of the statute.

A.

Plaintiff argues that his possession of the NIOC contract constituted "business"; that he was in a position to act as a principal in importing and selling oil under that contract; and, that he would have successfully done so but for (11876) defendants' conspiratorial acts. To support his assertion that he had the necessary financial resources, he points to a letter of credit. SONJ Ex. W-284 for id. He insists that he made efforts to sell the oil obtainable under his NIOC contract but that prospective purchasers were frightened off by defendants. In brief, he submits that the record facts show that he was engaged as a principal in the business of importing and selling oil under and by virtue of his contract.

The actual evidence, however, shows that the letter of credit was illusory; that plaintiff did not have the requisite

knowledge, experience and financial resources to exploit and take advantage of the NIOC contract as a principal; and that no genuine issue of material fact exists as to the existence of a "business" in this aspect of the case.

One cannot enter the business of importing and selling Iranian oil without a substantial amount of capital. While it is true that plaintiff was successful in procuring a letter of credit, an examination of the letter of credit itself reveals (and plaintiff so admits) that the letter of credit was intended by the issuing banks to commit them to transmit funds only when prior to such transmittal the sums had been actually paid to them or adequate security had been provided. See SONJ Ex. W-284 for id.; Tr. 1954-55, 7088.

(11877)

The record conclusively shows that plaintiff and his associates did not have the requisite capital or other assets to implement either the letter of credit or the NIOC contract as principals.[23] At one point during the oral argument of this motion, plaintiff's counsel conceded the correctness of this proposition.[24]

Other than the letter of credit and the Waldron group's minimal expenses[25] (assuming the correctness of the $50,000 figure), plaintiff has failed to produce any evidence which would support a finding that he did, could or was willing to invest enough money to operate the alleged oil business successfully. On the contrary, there is substantial testimony proving that plaintiff and his associates did not want to risk any of their own money in this venture. Tr. 8659-62, 9077.

For this reason, plaintiff has failed to establish that he had a prospective "business," at least with respect to the business of importing and selling Iranian oil.

In finding no "business" within the meaning of § 4 of the Clayton Act, many cases have stressed the lack of the plaintiff's financial involvement and potential. In *American Banana Co.* v. *United Fruit Co.*, 166 Fed. 261, 264 (2d Cir. 1908), *aff'd*, 213 U.S. 347 (1909), the court noted: "It is not averred (11878) that the plaintiff invested any money in preparing to engage in any such independent business. . . . ." See also *Volasco Prods. Co.* v. *Lloyd A. Fry Roofing Co., supra.*

In *Pastor* v. *American Tel. & Tel.*, supra, where the court found no "business or property," emphasis was placed on the fact that plaintiff was never in a financial position to maintain a business nor did he ever have a promoter to give him funds with which he could maintain a business.

Conversely, where a plaintiff has demonstrated both his financial ability to enter into a business and his intention to do so, the courts have found the existence of "business" within the meaning of § 4 of the Clayton Act. See *Deterjet Corp.* v. *United Aircraft Corp., supra.*

B.

The second aspect of plaintiff's claim as to the existence of "business" relates to his expectancy in a possible Cities Service management contract with NIOC.

However, the expectancy is a non-existent but hoped-for contract—one that presumably was in some stage of negotiation but which aborted—lacks substantial attributes of existing economic control or power; and, hence, cannot be regarded as "business." *cf. Productive Inventions, Inc.* v. *Trico Prods. Corp.*, 224 F.2d 678 (2d Cir. 1955), *cert. denied*, 350 U.S. 936 (1956).

(11879)

The word "business" is a conclusory term. It covers a broad spectrum of rights, powers and privileges which, singly or collectively, has conventionally been labeled "business" for the purpose of § 4 of the Clayton Act. There must be some modicum of existing economic power or control. To some extent, this may be circular logic inasmuch as the term "business" is a conclusion rather than a reason. It is a conclusion justified, however, by the analogous factual patterns of other decided cases.

Plaintiff's attempt to create a "business" out of the incipient Cities Service-Iranian transaction is unsuccessful. In this instance, plaintiff's claimed "business" possesses all of the infirmities of plaintiff's alleged "business" of importing and selling oil and, in addition, does not have a specific, written contract on which to fall back.

It is dobutful indeed whether plaintiff had any binding arrangement with Cities Service. His situation is quite similar to that of the plaintiff in *Peller* v. *International Boxing Club, supra,* which the court there characterized as an "embryonic effort." *Id.* at 596. See also *Broadcasters, Inc.* v. *Morristown Broadcasting Corp.,* 185 F. Supp. 641 (D.N.J. 1960); *Image & Sound Service Corp.* v. *Altec Service Corp.,* 148 F. Supp. 237 (D. Mass. 1956).

(11880)

C.

A third aspect of plaintiff's claim as to the existence of a "business" relates to his advantageous relationship vis-à-vis Iranian oil. Plaintiff reasons that this situational position itself constituted an economic opportunity

which should be equated with a "business." The Court, however, finds that the existence of that advantageous relationship per se is not sufficiently substantial to amount to a "business." *Cf. Duff* v. *Kansas City Star Co.*, 299 F.2d 320 (8th Cir. 1962).

D.

The fourth and final aspect of plaintiff's claimed "business" relates to his right to assign his NIOC contract and his attempt to assign that contract to an oil company that had the facilities to import and handle the oil. Plaintiff submits that those facts should be equated with "business." Assuming *arguendo* the correctness of this contention, plaintiff's claimed "business" would not serve the purposes of § 4 of the Clayton Act, for reasons that will now be discussed in relation to another but concomitant Section 4 requirement, that of direct injury.

This concomitant statutory requirement is that the plaintiff be "injured in his business." Hence, further (11881) critical inquiry with regard to this particular phase of the matter involves a determination of whether there is an issue of fact regarding the "injury" received by plaintiff "in his business," assuming that plaintiff's right to assign the NIOC contract constituted "business."

Judicial gloss upon the statute has created a body of doctrine prescribing that the injury be direct and primary as contradistinguished from secondary, incidental, remote or indirect.[26] A critique of this dichotomy is outside the scope of this opinion. See Comment, *Should "Injury" In Treble Damage Suits be Redefined?*, 51 Nw. L. Rev. 141 (1956); Comment, *Third-Party Recovery For Injury To*

Economic Interests—A Common-Law Problem In Interpreting The Antitrust Laws, 21 U. Chi. L.Rev. 709 (1954); 69 Harv. L. Rev. 575 (1956); 101 U.Pa. L. Rev. 1071 (1953).

Like the flexible concept of "business or property," the companion concept of "injury" is neither defined by statute nor formularized by interpretive decisions. See *Productive Inventions, Inc.* v. *Trico Prods. Corp., supra,* at 680; *Harrison* v. *Paramount Pictures, Inc.,* 115 F. Supp. 312, 317 (E.D. Pa. 1953), *aff'd per curiam,* 211 F.2d 405 (3d Cir.), *cert. denied,* 348 U.S. 828 (1954).

While the cases do not form a string of pearls "A (11882) fairly general pattern has emerged from this concept." *Schwartz* v. *Broadcast Music Inc.,* 180 F. Supp. 322, 327 (S.D.N.Y. 1959).

The following types of plaintiffs have been held to be without standing to sue for treble damages under the antitrust laws:

1. A patent owner who licenses his patents to a manufacturer on a royalty basis, suing for loss of royalties on sales which would have been made but for the antitrust conduct of defendants. *Productive Inventions, Inc.* v. *Trico Prods. Corp., supra.*

2. Shareholders, officers and creditors of corporations, suing for diminuation in value of ownership, loss of earnings or impairment of corporate ability to pay, caused by the impact of antitrust conduct on the corporation. *Bookout* v. *Shine Chain Theatres, Inc.,* 253 F.2d 292 (2d Cir. 1958); *Martens* v. *Barrett,* 245 F.2d 844 (5th Cir. 1957); *Westmoreland Asbestos Co.* v. *Johns-*

Manville Corp., 30 F. Supp. 389 (S.D.N.Y. 1939), *aff'd per curiam*, 113 F.2d 114 (2d Cir. 1940).

3. Nonoperating motion picture landlords, suing for depreciation in market value of the property or loss of rents attributable to antitrust violations relating to the showing of pictures at the theatres operated by their lessees. (11883) *Melrose Realty Co.* v. *Loew's, Inc.*, 234 F.2d 518 (3d Cir.), *cert. denied*, 352 U.S. 890 (1956); *Skouras Theatres Corp.* v. *Radio-Keith-Orpheum Corp.*, 193 F. Supp. 401 (S.D.N.Y. 1961); *Harrison* v. *Paramount Pictures, Inc., supra.*

4. An insurance broker, suing for loss of income caused by a conspiracy to deprive the company which he represented of a particular contract. *Miley* v. *John Hancock Mut. Life Ins. Co.*, 148 F. Supp. 299 (D. Mass.), *aff'd*, 242 F.2d 758 (1st Cir.), *cert. denied*, 355 U.S. 828 (1957).

5. A supplier of raw materials, suing for loss of sales resulting from conduct restricting the business of its major customer. *Snow Crest Beverages, Inc.* v. *Recipe Foods, Inc.*, 147 F.Supp. 907 (D. Mass. 1956). But *cf. Karseal Corp.* v. *Richfield Oil Corp.*, 221 F.2d 358 (9th Cir. 1955).

6. Music composers, suing for loss of royalties due to the impact of antitrust conduct on ASCAP, their marketer and publicizer. *Schwartz* v. *Broadcast Music, Inc., supra.*

Defendants contend that the facts now before the Court are analogous to those in the above-mentioned cases. Contrariwise, plaintiff argues that the facts herein are more similar to those in a line of cases where plaintiffs—

who suffered loss of commissions attributable to antitrust violations on the part of their employer in one case and on the (11884) part of their employer's competitors in another—were held to have the standing to sue under § 4 of the Clayton Act. See *Vines* v. *General Outdoor Advertising Co.*, 171 F.2d 487 (2d Cir. 1948); *Roseland* v. *Phister Mfg. Co.*, 125 F.2d 417 (7th Cir. 1942); *McWhirter* v. *Monroe Calculating Mach. Co.*, 76 F. Supp. 456 (W.D. Mo. 1948).

The cases relied on by plaintiff are distinguishable, at least according to the rationale of the decisions. In all of them, the complainants were directly engaged in the sale of products or services in the line of commerce restrained by the alleged conspiracy. See Comment, 46 Calif. L. Rev. 447 (1958).

In the instant case, the line of commerce allegedly restrained was the Iranian oil business. Plaintiff himself was not in the "business" of importing and selling Iranian oil. He attempted to assign his oil contract to an oil company (FNOC). As a potential or actual assignor of his oil contract (assuming that such assignment constituted "business"), plaintiff would be injured only indirectly and incidentally by the alleged conspiracy. As an assignor, plaintiff would be no better off than others in an analogous position; such as, the patent licensor whose licensee (not the licensor) has been held to be directly injured; the landlord whose lessee (not the landlord) has been held to be directly injured; or (11885) the stockholder whose corporation (not the stockholder) has been held to be directly injured.

Consequently, as an assignor (potential or actual) of his oil contract, plaintiff would be injured only indirectly and

incidentally. For that reason, even if plaintiff's right to assign the NIOC contract constituted "business," plaintiff would have no standing to sue under § 4 of the Clayton Act.

The Court's analysis of the four component aspects of plaintiff's alleged "business" leads to the conclusion that plaintiff was not directly "injured" in his "business."

Plaintiff argues that, in this case, the four individual aspects of his "business", when integrated, have greater cumulative legal significance than when his rights are fragmented and separately considered; that is, the composite of plaintiff's rights and activities constitutes "business" within the purview of § 4. The Court disagrees.

Plaintiff's varied activities create only an aura of his being engaged in the oil "business." Closer scrutiny reveals nothing more than several disjointed efforts unaccompanied by the traditional indicia and risks characteristic of "business."

Plaintiff's lack of experience in the oil business, his inability to finance any type of going concern and his (11886) unwillingness to assume the responsibilities of operating a business conclusively demonstrate that plaintiff was not engaged in the oil "business." See *Volasco Prods. Co.* v. *Lloyd A. Fry Roofing Co., supra; Peller* v. *International Boxing Club, supra; Pennsylvania Sugar Refining Co.* v. *American Sugar Refining Co., supra.*

The above analysis would be dispositive of this issue if § 4 of the Clayton Act protected only a person injured in his "business." However, § 4 has a broader sweep. It provides that "any person who shall be injured in his business *or property* . . . may sue." (Emphasis added.)

The majority of cases cited by defendants do not advert to the distinction between "business" and "property," for the simple reason that that distinction was not in issue in those cases, as it is here.

The statute explicitly uses the words "business or property" in the disjunctive. Congress intended this distinction to be meaningful.[27] The word "property" has wider scope and is more extensive than the word "business." Less is required to prove "property" than to prove "business."

The statute does not set up a qualitative or quantitative test to determine the existence of "property." Nor does the statute contain a built-in definition.

(11887)

The word "property" is, in a sense, a conclusory term, i.e., an interest which the law protects. A determination whether plaintiff has "property" involves a value judgment as to whether that which plaintiff factually possesses should be legally protected. If it be decided that the rights, privileges and powers possessed by plaintiff should receive judicial sanction, that conclusion would be expressed by declaring that plaintiff possesses "property."

Plaintiff's contract with NIOC constitutes "property" within the purview of Section 4. *North Texas Producers Ass'n* v. *Young,* 308 F.2d 235, 243 (5th Cir. 1962).[28]

Plaintiff has argued that he could have sold the oil at $1.19 a barrel f.o.b. Abadan to an oil company which, in turn, could have transported the oil to this or any other country or that he could have sold the NIOC contract outright. This eliminates the necessity of plaintiff's evidencing a substantial financial status or demonstrating his

background and ability to engage in the oil business—requirements that do exist in order to establish "business" as distinguished from "property."[29] The contract itself is asserted to have been inherently valuable. It is entitled to the protection afforded by § 4 of the Clayton Act.

Defendants have argued that the contract had no intrinsic value for the asserted reasons that "the prices (11888) were unattractive, and any such company contemplating buying the alleged contract would have known that it was buying a law suit by AIOC over the title to the oil. . . ." Memorandum of Points and Authorities in Support of Defendants' Motion to Dismiss and for Summary Judgment, p. 28.

This argument is without force because (1) it raises issues of fact on this summary judgment motion; and (2) its thrust is not on the question whether plaintiff had "property" but on the question of the amount of damage, if any, sustained by plaintiff. *Cf. Pennsylvania Sugar Refining Co.* v. *American Sugar Refining Co., supra,* at 260.

Having concluded that plaintiff had "property" within the purview of Section 4, we next consider whether the alleged injury to that property was direct and primary.

For the reasons hereinafter set forth, we conclude that the alleged injury was direct and primary.

The alleged conspiracy aimed to prevent the purchase and sale of Iranian oil. There would be no meaningful distinction between an injury inflicted upon a prospective purchaser of plaintiff's Iranian oil contract and, on the other hand, an injury inflicted upon plaintiff himself as the potential seller of that contract. Both victims would be direct targets of the conspiracy.

(11889)

The salient feature just adverted to creates the distinction between the present case and those discussed above, in which the injury was found to be indirect, incidental and secondary—a distinction which, at best, is one of degree and which cannot be drawn by any "hard and fast rule." *Productive Inventions, Inc.* v. *Trico Prods. Corp., supra,* at 680.

In the typical situations involving the lessor of a moving-picture theatre, the patent-licensor, or the stockholder of a corporation—the direct target of the conspiracy is the lessee-moving picture exhibitor, the patent-licensee, or the corporation. Consequently, those decisions hold that no direct and primary injury was suffered by the lessor, the licensor or the stockholder.

In view of the foregoing, we find that plaintiff has been injured in his property by the alleged conspiracy and that he has standing to sue.

DOES PLAINTIFF'S ALLEGED ILLEGAL AND SIMILAR MISCONDUCT PRECLUDE HIS STANDING TO SUE?

Defendants attack plaintiff's standing to sue, arguing that the uncontroverted evidence establishes that plaintiff procured his NIOC contract by means of conduct grossly violative of and repugnant to public policy.

(11890)

While there are variations in defendants' verbalization of this argument, the theme is the same: the NIOC contract, the predicate of plaintiff's Section 4 "property," is the fruit of plaintiff's illegal, immoral and corrupt acts

and, therefore, the Court should deny judicial recognition to plaintiff's status derived from that tainted contract.

One line of attack is that plaintiff procured the NIOC contract through the commission of federal criminal offenses. He is specifically charged by defendants with having violated five criminal statutes: the Logan Act (18 U.S.C. § 953), the mail fraud statute (18 U.S.C. § 1341), the false statement to government agency statute (18 U.S.C. § 1001), the conspiracy statute (18 U.S.C. § 371) and the false passport application statute (18 U.S.C. § 1542).

However, the record discloses the existence of genuine issues of material fact requiring resolution before it could be fairly determined that plaintiff had committed crimes in the process of securing the NIOC contract.

The Logan Act makes it a crime for any citizen of the United States directly or indirectly to commence or carry on correspondence or intercourse with any foreign government or any officer or agent thereof "with intent . . . to defeat the measures of the United States."

(11891)

Such evidence as there may be in this record of a violation of the Logan Act places in issue plaintiff's specific intent. That subjective circumstance would alone be sufficient to defeat this summary judgment motion, were the motion grounded only on a transgression of that statute.

Moreover, in considering proof of the "measures" of the United States required to spell out a violation of the Logan Act, the Court finds that there is substantiality to plaintiff's factual argument that the expressed United States policy with respect to the importation of Iranian

oil was neither definitive nor clear at the time of plaintiff's alleged violation.

The State Department's letter of February 4, 1952 (SONJ Ex. 3 for id.) to Senator Johnson (who forwarded it to plaintiff) would, at first reading, indicate that the State Department felt that Waldron should not in any way become involved in Iranian oil. A closer reading discloses that the letter expresses the State Department's "opinion," "attitude" and "belief," without incisively declaring or promulgating a defined policy.

While the State Department's choice of words may, according to diplomatic convention, be regarded as an expression of policy, it is doubtful whether this opinion-letter and its (11892) pronouncement rise to the status of "measures" for the penal purpose of the Logan Act.

That the State Department's attitude was not clearly and unequivocally delineated is suggested by its own subsequent language in a press release, dated December 6, 1952, expressing a less stringent view—a view that the movement of "small quantities of oil or oil products" seemed to the State Department as of relatively "minor importance" and "that the decision whether or not such purchases of oil from Iran should be made must be left to such individuals or firms as may be considering them, and to be determined upon their own judgment." State Dept. Bull., Dec. 15, 1952, p. 946.

The record thus poses an issue of material fact as to the existence and identity of "the measures of the United States" during the material period of time in 1952.

Another infirmity in defendants' claim that plaintiff violated the Logan Act is the existence of a doubtful question with regard to the constitutionality of that statute

under the Sixth Amendment. That doubt is engendered by the statute's use of the vague and indefinite terms, "defeat" and "measures." See *Shackney* v. *United States*, — F.2d —, — (2d Cir. 1964); Note, *The Void-For-Vagueness Doctrine in the Supreme Court*, 109 U. Pa. L. Rev. 67 (1960); E. Freund, *The Use of Indefinite Terms in Statutes*, 30 Yale L.J. 437 (1921). (11893) Neither of these words is an abstraction of common certainty or possesses a definite statutory or judicial definition.[29]

Since, however, there are other grounds for disposing of this motion, it is not necessary to decide the constitutional question.[30] Furthermore, any "ambiguity should be resolved in favor of lenity." *Bell* v. *United States*, 349 U.S. 81, 83 (1955), quoted in *Shackney* v. *United States*, *supra* at

Defendants' contention that plaintiff was part of a conspiracy (18 U.S.C. § 371) to violate the Logan Act is subject to the same infirmities as the defendants' claim based on a substantive violation of the Logan Act.

Plaintiff's violation of the mail fraud statute, according to defendants, stems from the multitude of false communications sent to Raphael, his Iranian agent, and intended to be transmitted to NIOC. The necessary elements of the offense of mail fraud are a scheme to defraud and the mailing of a letter for the purpose of executing the scheme. *Pereira* v. *United States*, 347 U.S. 1, 8 (1954).

Issues of material fact exist with respect to the materiality of plaintiff's statements, plaintiff's intent to deceive and plaintiff's knowledge of the falsity of the statements. *Cf. United States* v. *Buckner*, 108 F. 2d 921, 926 (2d Cir.), *cert. denied*, 309 U.S. 669 (1940).[31]

(11894)

Section 1542 of Title 18 of the United States Code proscribes the making of false statements in a passport application with the intent of inducing the issuance of a passport. The record does not contain evidence of any false statement in the passport applications of either Waldron or Nelson.[32]

Section 1001 of Title 18 of the United States Code makes it a crime, *inter alia,* to conceal a material fact from a department or agency of the Federal Government. The existence of genuine issues concerning materiality and plaintiff's intent precludes summary judgment based upon plaintiff's alleged violation of this statute. *Cf. Gonzales* v. *United States,* 286 F.2d 118 (10th Cir. 1960), *cert. denied,* 365 U.S. 878 (1961).

As an alternative to their charge that plaintiff committed criminal offenses, defendants contend that—regardless of the question of the technical criminality of plaintiff's conduct—plaintiff's conduct was so iniquitous, tainted, and repugnant to public policy and morals that this Court should deny recognition to plaintiff's claim and to plaintiff's status as a litigant.[33] Defendants' position is broadly couched in terms of public policy.

The cases concerned with illegal conduct debarring a litigant from court evince a circumspect approach.

(11895)

Violation of public policy may not be loosely invoked as a reason for depriving a litigant of his day in court. Any judicial judgment in this area of the law must be formulated in accordance with established criteria.

That standards are relative and involve judgment as to

matters of degree was pointed out by Judge Desmond in *McConnell* v. *Commonwealth Pictures Corp.*, 7 N.Y. 2d 465 (1960). We are confronted here not only with a sliding scale of ethical and moral value judgments but also with factual issues. The issues that must be resolved in appraising the moral aspects of plaintiff's conduct are intrinsically the same as those involved in determining whether plaintiff committed crimes.

Of course, it is not necessary to prove that a defendant committed a crime in order that his conduct be deemed sufficiently repugnant to morals to preclude his standing to sue. Nevertheless, a proper judicial evaluation of his conduct would embrace a consideration of his state of mind, his intention and his motives. These desiderata demonstrate the inappropriateness of a summary judgment, at least on the present record.

Whatever improprieties may be attributed to plaintiff, one thing is clear: the criticized acts were committed before plaintiff and the Iranians entered into their contract.[34] The Iranians, as the other contracting parties, have never attempted to rescind or avoid the contract.

(11896)

Defendants argue that—regardless of the characterization of the contract as void or voidable and regardless of the rights of the plaintiff and the Iranians *inter se*—plaintiff's course of conduct by which he procured the contract was so corrupt and repugnant that it tainted the contract and thereby disqualified it as "business or property" for the purpose of Section 4 of the Clayton Act.

Over and beyond the established distinction between void and voidable contracts and the fact that defendants

are not privy to the contract, other considerations militate against the granting of summary judgment.

Plaintiff has made sufficient asseverations of his honesty and denials of his wrongdoing to pose genuine issues of material fact. In such circumstances, plaintiff should not be summarily "adjudicated not only out of . . . [his] cause of action but out of . . . [his] good name as well." *Loew's Inc.* v. *Bays*, 209 F.2d 610, 612 (5th Cir. 1954).

The specific public policy of affording a litigant his day in court for the trial of genuine issues of material fact outweighs the generalized public policy of condemning immorality asserted by defendants to outlaw summarily plaintiff as a litigant.

(11897)

Defendants are also unable to escape the operation of still another specific public policy—the public policy that recognizes civil treble damage actions brought by private litigants as a device to aid the enforcement of the antitrust laws. See 110 Cong. Rec. 3018-19 (daily ed. Feb. 19, 1964).

The "public interest in vigilant enforcement of the antitrust laws through the instrumentality of the private treble-damage action" has long been recognized by the Supreme Court. *Lawlor* v. *National Screen Service Corp.*, 349 U.S. 322, 329 (1955).

In *Bruce's Juices, Inc.* v. *American Can Co.*, 330 U.S. 743, 751 (1947), the Court explained the rationale of that view:

> "This stimulates one set of private interest to combat transgressions by another without resort to governmental enforcement agencies. Such remedies have the advantage of putting back of such statutes a strong and reliable motive for enforcement, which relieves the Government of cost of enforcement. . . .

> It is clear Congress intended to use private self-interest as a means of enforcement and to arm injured persons with private means. . . ."

See also *D. R. Wilder Mfg. Co.* v. *Corn Prods. Refining Co.*, 236 U.S. 165, 174 (1915).

In the recent case of *J. I. Case Co.* v. *Borak*, — U.S. —, — (1964), the Supreme Court stressed the utility of such civil actions "as a most effective weapon in (11898) the enforcement" of federal regulatory statutes, saying that "it is the duty of the courts to be alert" to sustain such actions in order "to make effective the congressional purpose."

So strong is this public policy recognizing such actions as an enforcement technique that the courts have virtually abolished the defense of unclean hands or *in pari delicto* in private antitrust actions. See *Kiefer-Stewart Co.* v. *Joseph E. Seagram & Sons, Inc.*, 340 U.S. 211 (1951); *Trebuhs Realty Co.* v. *News Syndicate Co.*, 107 F. Supp. 595 (S.D.N.Y. 1952).[35]

Defendants concede the nonexistence of the defense of unclean hands in such actions. To dull the edge of this concession, defendants contend that they are asserting the defense of "illegality," not the defense of "unclean hands." This reformulation does not affect the substance of the matter.

The reasoning that induces a court to deny relief to a litigant with unclean hands is fundamentally the same as the rationale behind the public policy denying relief to one who has engaged in illegal conduct.

In both instances, the consequence of the litigant's misconduct is the forfeiture of judicial recogition of his claim.

Regardless of the rubric of "unclean hands" or "illegal-

ity," the countervailing specific public policy (11899) favoring private antitrust actions outweighs the general public policy sometimes invoked to withhold relief from a litigant guilty of misconduct.

This is not to suggest that it is impossible to conceive of situations where a plaintiff may have engaged in conduct so repugnant to good conscience, morals and law that a court could find a basis for withholding relief under the antitrust statute. See *Singer* v. *A. Hollander & Son, Inc.*, 202 F.2d 55 (3d Cir. 1953); *Maltz* v. *Sax*, 134 F.2d 2 (7th Cir.), *cert. denied*, 319 U.S. 772 (1943). Such is not the case at bar.

Another legal hurdle that defendants are unable to surmount is the principle that illegality, to serve as the basis for a plea in bar, must be related directly to the subject matter of the action. See, *e.g.*, *Connolly* v. *Union Sewer Pipe Co.*, 184 U.S. 540 (1902); *Board of Trade* v. *L. A. Kinsey*, 130 Fed. 507 (7th Cir. 1904), *aff'd*, 198 U.S. 236 (1905); *Fuller* v. *Berger*, 120 Fed. 274 (7th Cir. 1903), *cert. denied*, 193 U.S. 668 (1904); *General Elec. Co.* v. *Minneapolis Elec. Lamp Co.*, 10 F.2d 851 (D. Minn. 1924).

Under Section 4 of the Clayton Act, an essential ingredient of plaintiff's prima facie case is proof of injury to plaintiff's "business or property" and resulting damages. (11900) Plaintiff's NIOC contract and plaintiff's prospective interest in a possible Cities Service-Iranian management contract and any damages flowing from defendants' interference with those contractual rights would be directly related to plaintiff's present claim.

However, plaintiff's actual and prospective contracts must be sharply distinguished from the congeries of facts evidencing plaintiff's allegedly improper and illegal acts in negotiating those contracts. Plaintiff's NIOC contract was lawful and enforceable. At most, plaintiff's misrepresentations and other alleged misconduct gave the Iranians

the power and privilege to rescind or avoid the NIOC contract.

In the absence of avoidance or rescission by the Iranians, the NIOC contract was valid. Defendants, strangers to the contract, cannot exercise the personal power and privilege of the Iranians and disavow the contract. They cannot achieve that result either in the name of the Iranians or in the name of American public policy.

While plaintiff's NIOC contract has a direct nexus with the subject matter of this litigation, the facts of plaintiff's alleged misconduct in negotiating that contract are collateral to the present action. Assuming, therefore, that plaintiff engaged in illegal and other improper acts in (11901) negotiating the NIOC contract, such collateral illegality could not serve as a defense in this case.

In view of the foregoing, defendants' motion for summary judgment and to dismiss is hereby denied.

Part II.

Background Proceedings

Plaintiff commenced this treble damage antitrust action against British Petroleum Co., Ltd., Cities Service Co., Gulf Oil Corp., Socony Mobil Oil Co., Inc., Standard Oil of California, Standard Oil Co. (New Jersey) and Texaco, Inc. in June, 1956. In May, 1959, plaintiff's claim as to Gulf Oil Corp. was dismissed with prejudice, on stipulation.

In its broadest terms, plaintiff's amended complaint alleges that the aforesaid defendants conspired to maintain control over the production and marketing of Middle Eastern petroleum and products, to exclude other United

States companies from conducting business in Middle Eastern petroleum and products and to suppress and eliminate competition in Middle Eastern petroleum and products.[36]

Immediately after the original complaint was served, defendants moved for and were granted permission to examine (11902) plaintiff and his associates. These examinations continued for four years, at the end of which time defendant-Cities Service moved for summary judgment.[37]

Plaintiff opposed the motion for summary judgment and cross-moved for discovery pursuant to Rule 56(f) of the Federal Rules of Civil Procedure.

On May 4, 1961 this Court ordered that Cities Service's motion for summary judgment be adjourned pending completion of an examination of Cities Service by plaintiff, pursuant to Rule 56(f).

Gist of the Respective Contentions

Now before the Court is a renewal of Cities Service's motion for summary judgment. Plaintiff has again cross-moved for discovery pursuant to Rule 56(f).

Plaintiff maintains in support of its cross-motion: (1) that all of the relevant evidence needed by him to establish his allegations is in the exclusive possession of Cities Service; (2) that plaintiff cannot effectively oppose Cities Service's motion without such evidence; and, (3) that the prior discovery proceedings limited by the Court to plaintiff's taking of the deposition of George H. Hill, Jr. has proved to be "abortive" and unrewarding.

(11903)

Cities Service counters with a comprehensively prepared submission that it has demonstrated beyond any doubt the nonexistence of any genuine issue of material

fact as to it; that this lawsuit has been burdensome and costly; and that the time is now ripe for a definitive disposition of the motion for summary judgment.

The chronology of events in 1952 has been set forth in Part I. of this opinion. Plaintiff reasons that the sequence of those events conjoined with the nature of Cities Service's course of conduct as revealed by those events permits the rational inference (which plaintiff asks the Court to draw) that Cities Service was bought off by the larger oil companies.

Plaintiff admittedly speculates that the alleged payoff may have consisted of a contract between Cities Service and Gulf Oil Co. for oil from Kuwait, signed shortly after the above-noted events, or an opportunity advanced to Cities Service by the other defendants to participate in the oil consortium formed several years after the above-noted events.

As phrased by plaintiff's attorney upon the oral argument, the issue is whether this defendant did "pull out of Iran and join forces with the other defendants to boycott the plaintiff and other people trying to deal in Iranian oil." (S.M. p. 14, Argument of May 27, 1963).

(11904)

Seemingly modifying its earlier accusation that there was a payoff to this defendant, plaintiff restates his position: "The essential question remains did they conspire. They could conspire for absolutely no consideration." (*Ibid.*)

Plaintiff contends that, in order to substantiate its claim that Cities Service was bought off and to flush out evidence as to what constituted the payoff, he must have further discovery.

APPLICATION OF F.R.C.P. RULE 56 (f)

Rule 56(f) motions should be liberally granted, see, *e.g.*, *Loew's Inc.* v. *Bays, supra; Tobelman* v. *Missouri-Kansas Pipe Line Co.*, 130 F.2d 1016 (3d Cir. 1942); *Dombrovskis* v. *Esperdy*, 185 F. Supp. 478 (S.D.N.Y. 1960), *aff'd on other grounds*, 321 F.2d 463 (2d Cir. 1963); *Goldboss* v. *Reimann*, 44 F. Supp. 756 (S.D.N.Y. 1942), especially where, as here, all of the allegedly material facts are within the exclusive knowledge of the opposing party. See *Slagle* v. *United States*, 228 F.2d 673 (5th Cir. 1956).

As Professor Kaplan has recently observed:

> "Under rule 56(f) the adversary need not even present the proof creating the minimal doubt on the issue of fact which entitles him to a full trial; it is enough if he shows the circumstances which hamstring him in presenting that proof by affidavit in opposition to the motion."

Kaplan, *Amendments of the Federal Rules of Civil Procedure, 1961-1963 (II)*, 77 Harv. L. Rev. 801, 826 (1964).

(11905)

The practical necessity for a liberal application of F.R.C.P., Rule 56(f) is underscored by the incisive reminder in *Dressler* v. *The MV Sandpiper*, 331 F.2d 130, 132 (2d Cir. 1964) of "the desirability of the summary judgment procedure" and of the pointed significance of the recent amendments to F.R.C.P., Rule 56(e). Rejecting a narrow view of the trial court's role in motions for summary relief as incompatible with the basic purpose of F.R.C.P., Rule 56, the Court of Appeals (per Kaufman, J.) in *Dressler* declared that "highly general assertions . . .

buttressed by no specific facts or evidentiary data, are hardly the sort of concrete particulars which the amendments sought to require." *Id.* at 133. See also *Scolnick* v. *Lefkowitz*, 329 F.2d 716 (2d Cir. 1964).

Since plaintiff must—if he is to oppose successfully Cities Service's summary judgment—eventually submit "specific facts" which "would be admissible in evidence" [Rule 56(e)], plaintiff should be given another opportunity to conduct pretrial discovery.

Plaintiff will be allowed to examine Burl S. Watson, A. P. Frame and J. E. Heston, all of Cities Service Co., in accordance with the order to be settled on June 30, 1964.

Such discovery proceedings will be supervised by the Court in order to maintain a just and workable balance between the respective interests of the opposing parties.

(11906)

The motion of Cities Service for summary judgment will be adjourned pending the completion of such discovery proceedings.

Part III.

Settlement of Order and Scheduling of Pretrial Discovery

The Court will confer with counsel on June 30, 1964, 10:30 A.M., for the following purposes:

(1) To define the scope of plaintiff's depositions of Cities Service Company, by the three representatives

named in the opinion, and to establish a schedule of dates for the taking of said depositions.

(2) To establish a schedule of dates for the service of plaintiff's opposition and defendants' replies, and for oral argument, on the pending motion to strike and for a pre-trial order made by defendants other than Cities Service.

WILLIAM B. HERLANDS
William B. Herlands
U.S.D.J.

Dated: New York, N. Y.,
June 23, 1964.

(11907)

FOOTNOTES

* Part I of this opinion deals with the motion for summary judgment and to dismiss made by defendants other than Cities Service Company. Part II deals with the summary judgment motion made separately by Cities Service and plaintiff's cross-motion for further discovery. The factual recitals in Part I are equally applicable, so far as relevant, to Part II.

1 Defendants' motion for dismissal of the action is based on depositions, exhibits and other documents dehors the pleadings. Consequently, it will be treated as a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure. Rule 12 (c), Federal Rules of Civil Procedure; Butcher v. United Elec. Coal Co., 174 F.2d 1003 (7th Cir. 1949).

2 The seriousness of the dispute in the eyes of the United States is described in a letter sent to Congressman Emanuel Celler by Secretary of State John Foster Dulles in 1955:

> "As you know, the dispute between the Anglo-Iranian Oil Co. and the Iranian Government over the company's oil concessions and the subsequent nationalization of the oil properties by the Iranian Government resulted in the virtual cessation of the operations. As a consequence, Iran was deprived of its largest single source of income, and its whole economy was on the verge of disintegration. In addition to direct economic effects, there were other indirect but equally menacing political results. Threatened with bankruptcy, the Iranian Government was vulnerable to the political machinations of a Communist conspiracy to seize power. During the years 1951-53, the power of this conspiracy grew rapidly until, by 1953, Communist elements were merely biding their time while readying themselves for final seizure." Hearings before Antitrust Subcommittee on the Judiciary, House of Representatives, 84th Cong., 1st Sess., Pt. II, pp. 1556-59.

3 "Cmd. 8425" refers to a pamphlet entitled, "*Correspondence between His Majesty's Government in the United Kingdom and the Persian Government, and Related Documents concerning the*

(11908)

Oil Industry in Persia, February 1951 to September 1951," presented by the Secretary of State for Foreign Affairs to Parliament

by Command of His Majesty, December 1951, and published by His Majesty's Stationary Office.

[4] For example, W. Averell Harriman was sent to Iran to help bring about a settlement. State Dept. Bull., July 23, 1951, p. 130.

When this attempt failed, active support was given the efforts of the World Bank to solve the dispute. See State Dept. Bull., Jan. 21, 1952, p. 84.

Again when this attempt failed President Truman and Prime Minister Churchill, in August of 1952, made joint proposals to the Iranians regarding solution of the problem. State Dept. Bull., Sept. 8, 1952, p. 360.

[5] "Tr." refers to depositions which have been conducted by defendants.

[6] Both Waldron and Nelson have testified that they never had any experience in the field of marketing or selling oil. Tr. 13 (Waldron), 7490-91 (Nelson).

[7] At about this time, Nelson and Waldron contacted James A. Bentley, a management consultant, in the hope that he could locate oil tankers and purchasers. Shortly after receiving the State Department reply, Waldron wrote to Bentley and stated, "It is my personal opinion that it appears that the State Department would not actually interfere with any transactions on Iran oil which might be consumated [sic]." SONJ Ex. B-116 for id.

[8] This cablegram was confirmed by letter on February 21, 1952. SONJ Ex. 47 for id.

[9] Waldron and Nelson were aware of these negotiations. In his February 21st letter (see n. 8, *supra*) Nelson stated: "It was my hope that this cable would enable you to present something concrete to your Prime Minister to aid him in his negotiations with the International Bank Committee."

[10] The fact is that, with the exception of three rather half-hearted attempts on the part of Nelson, no efforts were made by any member of the Waldron group to obtain purchasers at this time. SONJ Exs. 5, 46 for id.; Tr. 7655-59.

(11909)

[11] Finally, on March 17, 1952 the World Bank recessed its efforts.

In fairness to plaintiff, it is pointed out that Mutual Security Agency Bulletin No. 59, published on March 25, 1952, listed Iran as a geographically acceptable source of crude oil. SONJ Ex. W/N-303 for id.

[12] The individual members of the Waldron group apparently felt no qualms about lying to each other as well as to Raphael. On April 16, 1952 Bentley wrote to Nelson:

> "Dick, I wish that I could tell you the names of the prospective oil purchasers. I simply cannot do this because I am bound not to disclose these names to anyone under any circumstances at this time. I doubt that I shall be able to obtain permission to disclose these names even in the strictest of confidence, until as and when they are ready to sign actual purchase contracts." SONJ Ex. 77 for id.

In his deposition, Bentley admitted that these statements were false as he had no such purchasers. Tr. 8395-96.

[13] An examination of this May 25th agreement shows it to be an option. By its terms, the Waldron group was not even entitled to receive a signed copy until an initial cargo of 10,000 tons had been paid for. SONJ Ex. 12 for id.

[14] No attempt was ever made by Zoes to actually charter or purchase a tanker. Tr. 9125.

[15] The contact was with Ray Carter, an individual who had been employed by Cities Service for some 25 years before leaving to engage as an oil broker. Tr. 1227.

[16] The following is a translation of the letter, as set forth in plaintiff's Memorandum of Facts (filed Aug. 20, 1963) pp. 20-21:

"Seal of Iran
Prime Minister

Without engagement July 26, 1952

(11910)

Dear Mr. Jones,

The Government of Iran having taken title to all the oil enterprises of the country desires that these enterprises be put in action as soon as possible.

It appears that this plan will be well realized if the services of some American companies of first rank can be obtained, provided the latter will lend their technical assistance (in marketing, operating, direction of personnel).

As our National Iranian Oil Company has already had some commercial transactions with your company, and we are informed that your organization is well placed from this point of view to render such a service, for this reason among others, therefore we have the

pleasure of inviting you to come to Teheran as soon as possible, to the end that we may discuss the details of such an enterprise.

Thanking you in advance, please be assured of our very serious consideration.

Dr. M. Mossadegh

Mr. W. Alton Jones,
President
Cities Service Company
Sixty Wall Tower
New York 5, N.Y."

[17] Plaintiff claims that Jones' sudden loss of interest was caused by Cities Service's having been "bought off" by the other defendants and thus becoming a member of the alleged conspiracy.

[18] The events which followed the diplomatic break are set forth in a letter sent to Congressman Celler from Secretary of State Dulles on July 13, 1955. See n. 2, *supra*.

> "On October 22, 1952, the situation was made still more difficult by Mosadeq's action in severing diplomatic relations with the British Government, which made it impossible for the participants to engage in direct negotiations. Meanwhile, the

> Iranian Parliament grew increasingly hostile to Mosadeq's drive toward dictatorship. In order to rid himself of this opposition, Mosadeq dissolved the Parliament. To give some color of legality to this action he arranged for the conduct of a so-called referendum which was manipulated by force and chicanery so as to ratify the dissolution of Parliament.
>
> "Finally, in August 1953, Mosadeq took the final steps which confirmed his intention to rule as a dictator without regard for constitutional limits. On August 15 he was dismissed by an imperial decree which appointed General Zahedi as the new Prime Minister. Mosadeq refused to relinquish his office, caused the bearers of the decree to be arrested and, contrary to the constitution, used force to maintain himself in power, in which he was supported by the illegal Tudeh Party. Having dissloved the Parliament, reduced the courts to impotence and made a fraud of the electoral process, he now proposed to rule by personal fiat.
>
> "There followed a period of 4 days of serious disorders during which steps were taken by Mosadeq's cohorts, in collaboration with the Communists, to overthrow the monarchy. However, the revolting elements proceeded in such blunt fashion with the campaign to discredit and disgrace the monarchy

that they produced a counterreaction in the form of a popular uprising against this effort to destroy the throne. The aroused people, assisted by loyal elements of the army, rose to defend the legitimate Government of Prime Minister Zahedi, and the Mosadeq regime was forced out. It should be noted that, although the Mosadeq government in effect defeated itself by its unreasonable and dictatorial acts, Iran had been forced dangerously close to domination by the Communist and there is good reason to believe that had this popular revolt not taken place Iran would actually have fallen under Communist control within a matter of days." See n. 2, *supra*.

[19] The fact is that plaintiff was so busy in connection with the incipient Cities Service deal that he had no time to search for customers.

[20] The Richfield negotiations suddenly terminated in September, 1953. Tr. 4272-73. Plaintiff charges that Cities Service (who had a minority interest in Richfield) frustrated plaintiff's negotiations with Richfield.

(11912)

[21] Consequently, those decisions denying summary judgment in complicated antitrust cases where genuine issues of fact respecting defendants' conduct existed are inapposite.

[22] See n. 1, *supra*.

[23] Nelson's net worth in 1952 was approximately $24,000. SONJ Ex. B-267 for id.

Waldron's net worth was about $86,000. Tr. 1918-19. Tr. 1918-19; SONJ Ex. B-269 for id.

Zoes' net worth was stated to be about $140,000. SONJ Ex. B-268 for id.

[24] "The Court: The question is, was he [plaintiff] in a position to take advantage of this letter of credit? You say he was.

Mr. Lane: Yes.

The Court: How?

Mr. Lane: What I am saying is, where under the Consortium they buy this oil at $1.20 a barrel plus a dime that goes to the Anglo-Iranian Oil Company, and that is a valuable contract to them, if he had a contract to buy three million tons—

The Court: But these people are in the oil business.

Mr. Lane: Wait a second. If he had a contract to buy it at $1.19, he had something which would interest other people in buying that oil.

The Court: In other words, you claim that the value of the contract was not in having him act as an importer—

Mr. Lane: That is right.

The Court: —but in his ability to assign or sell the contract?

Mr. Lane: That is right."

Argument of Motion, May 11, 1964, pp. 219-20. See also Tr. 6745-46.

25 Plaintiff has asserted that he and his associates expended over $50,000 trying to implement the contract. Defendants contend that $14,000 is a more accurate estimate.

26 The reason behind this limitation was articulated in *Snow Crest Beverages, Inc.* v. *Recipe Foods, Inc.*, 147 F. Supp. 907, 909 (D. Mass. 1956). In that case, Judge Wyzanski stated that without this limitation

(11913)

> ". . . there would as a result of the treble damage provisions of the anti-trust acts have been given in each case to the plaintiff what has sometimes been called a 'windfall' . . . In effect, businessmen would be subjected to liabilities of indefinable scope for conduct already subject to drastic private remedies."

27 Counsel have not called the Court's attention to any Congressional reports or debates that would shed light on the legislative purpose underlying this choice of language. Nor has the Court's independent research disclosed such interpretive aids.

28 In *North Texas*, the court held, "A valid contract is property." Defendants point out that in *North Texas*, the court was not faced with this specific issue as plaintiff had showed more than a contract. The court specifically found that plaintiff had the financial resources to implement the contract, as at a later date he did in fact enter the business. Moreover, the plaintiff in *North Texas* was found to have had prior experience in the business.

The court chose to emphasize the "property" aspect of plaintiff's case, and in fact used this analysis to distinguish *Duff* v. *Kansas City Star Co.*, 299 F.2d 320 (8th Cir. 1962). In *Duff*, the court accepted as true plaintiff's allegations that: (1) he had been in the newspaper business eight years before he attempted to re-enter it; (2) he owned a copyrighted newspaper name; (3) he had located an office; (4) he had made arrangements to have his paper printed; (5) he had taken extensive samplings of the advertising market and newspaper industry; and, (6) he had the capital necessary to enter the business. Despite these facts, however, plaintiff's antitrust complaint was dismissed on the ground that he had not shown "busi-

ness or property." The court in *Duff* specifically found that there was no property right in the trade-name for the purpose of section 4.

[29] This is not to suggest that plaintiff can prevail upon his motion without first demonstrating that he intended to use or was using this property in a manner which was inconsistent with the purposes of the conspiracy. See *Pastor* v. *American Tel. & Tel. Co.*, 76 F. Supp. 781 (S.D.N.Y. 1940); *Rossman* v. *Pullman Co.*, 15 F. Supp. 325 (S.D.N.Y. 1936). Plaintiff must show that he was "injured" in his "property."

(11914)

The record sufficiently indicates, at least for purposes of this motion, that plaintiff made serious efforts on numerous occasions to sell the oil and/or the contract. See Affid. Submitted by Plaintiff Pursuant to Order Dated May 22, 1964.

[30] The Logan Act originated out of a resolution offered on December 26, 1798 by Congressman Roger Griswold of Connecticut. After it was reported out as a bill, it was approved by President Adams on January 30, 1799. The debates on this legislation before the 5th Congress, 3rd Session (1798-1799) were thereafter compiled by Gales and Seaton in 1851 as Annals of Congress of the United States. Page references herein are to the 1851 compilation.

The primary purpose of the resolution was "to punish a crime which goes to the destruction of the Executive power of the Government" (p. 2488); "to guard by law against the interference of individuals in the negotiation of our Executive with the Governments of foreign countries" (p. 2494; see also pp. 2588, 2604); to proscribe the exercise by an individual of the power "to frustrate all the designs of the Executive" (p. 2494).

The statute as a whole was criticized in debate by Albert Gallatin (of Pennsylvania) and Edward Livingston (of New York) on the ground that "it is drawn in the loosest possible manner; and wants that precision and correctness which ought always to characterize a penal law" (p. 2637; see also p. 2595); and that there is no "clear idea of the precise acts upon which it is designed to operate" (p. 2690).

The record of debates discloses no discussion of the intended meaning of the words "defeat" or "measures."

The Court finds no merit in plaintiff's argument that the Logan Act has been abrogated by desuetude. From the absence of reported cases, one may deduce that the statute has not been called into play because no factual situation requiring its invocation has been presented to the courts. *Cf.* Shakespeare, *Measure For Measure*, Act II, Scene ii ("The law hath not been dead, though it hath slept.").

It may, however, be appropriate for the Court (Canons of Judicial Ethics, Judicial Canon 23) to invite Congressional attention

(11915).

to the possible need for amendment of Title 18 U.S.C. § 953 to eliminate this problem by using more precise words than "defeat" and "measures" and, at the same time, using language paralleling that now in § 954.

[31] While there is considerable evidence presently before the Court that plaintiff knowingly made false representations with intent to deceive, the Court cannot rule that, as a matter of law, plaintiff is guilty of the crime of mail fraud. See Poller v. Columbia Broadcasting System, Inc., 368 U.S. 464 (1962).

[32] See text, p. 8, *supra*. Oil is literally a "raw material." Therefore, the statements of Waldron and Nelson are, strictly speaking, accurate.

[33] Defendants argue that plaintiff's conduct should be condemned in light of the public policies mirrored in the aforementioned penal statutes.

Defendants also charge that plaintiff's 50 percent contingent fee contract with Raphael larded with Raphael's none-too-subtle written intimations of a payoff to then politically influential Iranians illegitimatizes the entire transaction.

For an analysis of the rationale underlying the distinction between criminal acts and immoral acts, see Newett, *Morality And The Criminal Law*, 14 U. of Toronto L.J. 213 (1962). *Cf.* Shaw v. Director of Public Prosecutions, 2 All E. R. 446, 452 (House of Lords 1961), where it was said:

> " . . . there remains in the courts of law a residual power to enforce the supreme and fundamental purpose of the law, to conserve not only the safety and order but also the moral welfare of the state. . . . That is the broad head (call it public policy if you wish). . . . It matters little what label is given to the offending act."

[34] This fact alone is sufficient to distinguish the great majority of cases relied upon by defendants. Most of the cases cited by defendants involved suit on a contract made between plaintiff and

(11916)

defendant, the performance of which acts contrary to public policy. See, *e.g.*, Trist v. Child, 88 U.S. 441 (1874); Tool Co. v. Norris, 69 U.S. 45 (1864); Marshal v. Baltimore & Ohio R. R., 57 U.S. 314 (1853).

In the case at bar, defendants are not being sued on a contract. They are not parties to plaintiff's contract. The performance of plaintiff's contract did not involve acts that would have been indisputably contrary to public policy.

[35] The only type of antitrust situation in which the defense of *in pari delicto* has been held to be available is one where plaintiffs were claimed to have been parties to the alleged illegal acts of defendants. See Pennsylvania Water & Power Co. v. Consolidated Gas Elec. Light & Power Co., 209 F. 2d 131 (4th Cir. 1953), *cert. denied*, 347 U.S. 960 (1954); Lehmann Trading Corp. v. J & H Stolow, Inc., 184 F. Supp. 21 (S.D.N.Y. 1960).

[36] Plaintiff's Amended Complaint, July 12, 1963, par. 9. Defendant Cities Service was not named as one of the original conspirators but was alleged to have joined the conspiracy at a date not known to plaintiff. *Id.* at par. 11.

[37] Plaintiff charges Cities Service with having been bought off by the other oil companies.

Order, Dated May 3, 1961

(12142)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Defendant Cities Service Company having moved, by Notice of Motion, dated April 8, 1960, for an Order, pursuant to Rule 56 of the Federal Rules of Civil Procedure, for summary judgment in its favor dismissing plaintiff's complaint as against it, it is hereby

ORDERED that the said motion be, and the same hereby is, adjourned, pending completion of an examination of defendant Cities Service Company by plaintiff pursuant to

Rule 56(f) of the Federal Rules of Civil Procedure; and it is hereby further

ORDERED that said examination shall commence on the 31st day following the conclusion of the deposition program set forth in the Order of this Court dated February 11, 1958; and it is hereby further

ORDERED that said examination be limited and confined to the following two subjects:

(12143)

(a) the making of the Agreement dated January 26, 1953, between Cities Service Company and Gulf Oil Corporation, for the sale and processing of Kuwait oil; and

(b) the acquisition by Cities Service Company of the opportunity to become a member of the Iranian Oil Consortium;

and it is hereby further

ORDERED that said examination of Cities Service Company shall be by George H. Hill, Jr.; and it is hereby further

ORDERED that plaintiff's examination of defendant Cities Service Company shall be conducted on no more than ten (10) working days; and it is hereby further

ORDERED that, within twenty (20) days following the conclusion of said examination, plaintiff and defendant Cities Service Company may submit to the Court any por-

Order, Dated May 3, 1961

tion of such deposition for final consideration of the pending motion.

s/ WILLIAM B. HERLANDS
United States District Judge

Dated: New York, N. Y.
May 3d, 1961

U.S.D.C.
Filed
May 4, 1961
S.D. N.Y.

Memorandum Opinion, Dated March 30, 1961

(11656)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

MEMORANDUM

The motion of defendant Cities Service Co. for summary judgment is adjourned pending completion of such pretrial proceedings as may hereafter be appropriately conducted by plaintiff.

When the commencement of such proceeding shall be deemed to have become timely under the outstanding and controlling order of the court, counsel will be heard as to

the nature and scope of proposed depositions, discovery and inspection, and other related pre-trial matters. At such hearing, due consideration will be given to the formulation (11657) of orders defining the issues, specifying subjects, and particularizing the questions encompassed within plaintiff's pre-trial proceedings.

For the guidance of counsel, the court observes, on the basis of the present record:

1. It is doubtful in the extreme whether plaintiff has shown that there is a genuine issue as to any material fact with respect to his claim against the defendant Cities Service Co.

2. The naming of Cities Service Co. as a defendant herein when the complaint was drawn was based only on suspicion and on a gossamer inference drawn from the mere sequence of events.

3. But for the prevailing strict policy in this circuit with respect to the invocation of the summary judgment procedure, the court would have granted the motion. This court has examined virtually every reported summary judgment decision rendered in this circuit since *Arnstein* v. *Porter*, 154 F. 2d 464 (2d Cir. 1946), over one thousand in number. The rationale and philosophy of *Arnstein* v. *Porter* have not been attenuated by the subsequent course of decisions.

(11658)

4. In view of (a) the surface complexity of the case, (b) the indirect law enforcement aspects of even this private antitrust case, (c) the very extensive pre-trial

examinations of the plaintiff already conducted by the defendants and the complete absence of any pre-trial examination of any defendant by the plaintiff—it would appear to be fair to postpone a decision of the summary judgment motion and to afford the plaintiff an opportunity to engage in appropriately supervised discovery and related pre-trial proceedings.

5. Because plaintiff's claim against the defendant Cities Service Co. is, judged by the entire available record, so insubstantial, the plaintiff will not be given carte blanche authority to conduct untrammeled pre-trial proceedings. Such proceedings will be closely regulated. The usual Federal rule permitting fishing expeditions will be curtailed. A just and workable balance will be maintained between the respective interests of the opposing parties.

The court will confer with counsel with respect to the settlement of an order in accordance with the foregoing views.

March 30, 1961.

WILLIAM B. HERLANDS
U.S.D.J.

U.S. DISTRICT COURT
FILED
MAR 30 1961
12:05 pm
S. D. OF N. Y.

Amended Complaint

(11848)

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Plaintiff, by his attorneys Casey, Lane & Mittendorf, brings this action against defendants and upon information and belief alleges as follows:

I.

JURISDICTION AND VENUE

1. This claim is made under the provisions of Section 4 of the Clayton Act, 15 U.S.C. § 15, for damages to compensate the plaintiff for injuries suffered by him in his business and property by reason of the commission by defendants of acts forbidden by Sections 1 and 2 of the Sherman Act, as amended, and Section 73 of the Wilson Tariff Act, 15 U.S.C. §§ 1, 2, 8. The jurisdiction of this Court is invoked under the Clayton Act and the Act of June 25, 1948, 28 U.S.C. § 1337.

(11849)

2. Each of the defendants transacts business within the Southern District of New York and may be found there.

3. Plaintiff, Gerald B. Waldron, is a resident of the State of Arizona and does business as Consolidated Brokerage in Denver, Colorado.

II.

Description of Defendants

4. The following corporations are made defendants herein;

Name and Address	Place of Incorporation	Principal Place of Business	Abbreviated Name
British Petroleum Company Ltd. (Formerly Anglo-Iranian Oil Company, Ltd.) 610 Fifth Avenue New York, New York	Registered in United Kingdom	London, England	"Anglo-Iranian"
Cities Service Company 60 Wall Street New York, New York	Delaware	New York, New York	"Cities Service"
Socony Mobil Oil Company Inc. 150 East 42 Street New York, New York	New York	New York, New York	"Socony"
Standard Oil Company of California 30 Rockefeller Plaza New York, New York	Delaware	San Francisco, California	"Socal"
Standard Oil Company (New Jersey) 30 Rockefeller Plaza New York, New York	New Jersey	New York, New York	"Jersey"
Texaco, Inc. 135 East 42nd Street New York, New York	Delaware	New York, New York	"Texas"

(11850)

5. Each of the defendants is a fully integrated enterprise carrying on, by its own acts or through numerous subsidiaries and affiliates in many part of the world, exploration, production, transportation, refining, marketing, research and manufacturing operations with respect to petroleum and products thereof. Defendants, and their subsidiaries and affiliated companies, together with their co-conspirators Gulf Oil Corporation (hereinafter called "Gulf") and the Royal Dutch/Shell Group (hereinafter called "Royal Dutch") control a substantial part of the Free World's estimated crude oil reserves, and dominate the production, refining and transportation of petroleum and products in the Free World, and account for the major part of the petroleum and products marketed in the countries of the Free World.

6. The acts herein alleged to have been done by the defendants were authorized, ordered, and done by officers, agents or employees thereof.

III.

The Commerce Involved

7. The trade and commerce involved herein is in petroleum and products thereof. The words "petroleum and products" shall be deemed to include crude oil and the principal products refined therefrom, including gasoline, fuel oils, lubricating oils, gas oils, diesel oils, white oils, and kerosene. Defendants, and their subsidiaries and

affiliated companies, have for many years imported and are now importing vast quantities of Middle Eastern petroleum and products into the United States and putting the same into interstate commerce. The value of such imported petroleum (11851) and products amounts to many millions of dollars each year.

IV.

The Conspiracy

8. As is set forth in great detail in *United States* v. *Standard Oil Company (New Jersey) et al.*, Civil Action No. 86-27, the so-called "Oil Cartel Case" now pending in this Court, defendants Anglo-Iranian, Socony, Socal, Jersey and Texas, assisted by Gulf and Royal Dutch as co-conspirators, at least as early as 1951, and at all times hereinafter mentioned engaged in an unlawful combination and conspiracy to restrain interstate and foreign commerce of the United States in petroleum and products and particularly Middle Eastern petroleum and products in violation of Section 1 of the Sherman Act and Section 73 of the Wilson Tariff Act, and unlawfully to monopolize the same in violation of Sections 1 and 2 of the Sherman Act and Section 73 of the Wilson Tariff Act.

9. The aforesaid conspiracy and monopolization consisted of a continuing secret agreement and concert of action among defendants Anglo-Iranian, Socony, Socal, Jersey and Texas and their co-conspirators among other things to:

(a) Secure, maintain and exercise control of the produc-

tion, refining, transporting and marketing of Middle Eastern petroleum and products;

(b) Exclude United States companies and persons, other than defendants and their co-conspirators, from engaging in the production and refining of (11852) Middle Eastern petroleum and products, and from importing Middle Eastern petroleum and products into the United States;

(c) Suppress and eliminate competition in Middle Eastern petroleum and products.

10. On May 1, 1951, the Government of Iran nationalized all Iranian oil properties and related installations, and, shortly thereafter, turned over the management of the nationalized industry to the National Iranian Oil Company, an instrumentality of the Government of Iran. Anglo-Iranian, the ousted concessionaire, protested this, challenged its legality, and sought in diverse ways to frustrate nationalization and regain its former position in Iran. These efforts centered on blocking the sale of Iranian petroleum and products so as to weaken the Iranian economy and promote political unrest and civil disorder.

11. In these circumstances, Socony, Socal, Jersey, and Texas, as well as Gulf and Royal Dutch, came to the assistance of Anglo-Iranian and for the purpose of preserving to themselves and Anglo-Iranian the control of Middle Eastern petroleum and products which they had theretofore enjoyed, determined and agreed that no one of them nor any other person should henceforth deal in Iranian petroleum and products until a solution of the controversy between Anglo-Iranian and the Iranian Gov-

ernment was found which would effect that purpose. Subsequently, at a date not known to plaintiff because defendants concealed the facts from plaintiff, defendant Cities Service joined this conspiracy.

12. On May 26, 1952, plaintiff obtained from the (11853) National Iranian Oil Company a contract for the sale of 15,000,000 metric tons of Iranian petroleum and products, at prices substantially below existing Gulf of Persia prices, to wit: $4.14 per ton below the then posted price of $12.89 per ton for the first 3 million tons and $2 per ton below the posted price for the remaining 12 million tons. The contract was for five years and granted plaintiff exclusive selling rights to the United States market.

13. Defendants and their co-conspirators acting in secrecy through various agents and innocent people did the following to achieve a boycott of Iranian petroleum and products, one of the purposes and effects of which was to frustrate plaintiff's dealings in Iranian petroleum and products:

(a) Anglo-Iranian published a series of advertisements threatening litigation to any who would deal in Iranian petroleum and products. To assist Anglo-Iranian in its effort to frighten off prospective purchasers, defendants and their co-conspirators caused statements to be circulated and published within and without the oil industry attacking the Iranian nationalization, maligning the Iranian leaders, characterizing Iranian petroleum and products as stolen or "hot" oil, disparaging and threatening any who would deal in (11854) Iranian petroleum and products and generally supporting Anglo-Iranian

in its campaign to regain its former position in Iranian petroleum and products.

(b) On or about August 1, 1952, Anglo-Iranian, through its New York attorneys, Sullivan & Cromwell, sent to plaintiff and others, letters threatening litigation against plaintiff and any others who dealt directly or indirectly in Iranian petroleum and products, asserting that any such dealing would be contrary to international law. These threats were a part of a campaign by Anglo-Iranian to frighten off would be purchasers by threatening costly litigation.

(c) Defendants and their co-conspirators acting in concert, refused to purchase Iranian petroleum and products from plaintiff and others, including the National Iranian Oil Company, notwithstanding that petroleum and products were critically short in many areas of the Free World supplied by defendants (11855) and their co-conspirators and that such purchases were necessary to sustain Iran's economic and political independence as a member of the Free World. At the same time, in order to strengthen Anglo-Iranian's hand in dealing with Iran, defendants and their co-conspirators greatly altered their production and marketing in order to supply from other sources the petroleum and products needed to fill the gap created by the Iranian stoppage.

(d) Defendants and their co-conspirators, or some of them, caused knowledge to be disseminated among independent refiners, marketers and dealers that they would look with disfavor upon any who dealt in Iranian petroleum and products, and that those who did deal in Iranian petroleum and products would suffer economic reprisals.

(e) Defendants and their co-conspirators, or some of them, cause knowledge to be disseminated among tanker operators that any tanker operator partici-

pating in the transportation of Iranian petroleum and products might be blacklisted from transporting petroleum and products owned or controlled by defendants.

(11856)

(f) Defendants and their co-conspirators, or some of them, caused the Chase National Bank and the Marine Midland Trust Company to refuse plaintiff customary financial service in connection with the importation of Iranian petroleum and products.

(g) Defendants Anglo-Iranian, Socony, Socal, Jersey, Texas and their co-conspirators Gulf and Royal Dutch, with the aid of others, secretly threatened, induced and conspired with defendant Cities Service to break off all dealings with plaintiff and not to proceed further with its demonstrated interest in dealing in Iranian petroleum and products, including the management of certain aspects of the Iranian petroleum industry.

(h) Defendants and their co-conspirators, or some of them, interfered with plaintiff's attempt to market through Oil Merchants Company substantial quantities of Iranian aviation gasoline and other products for use by the United States Military and other United States governmental agencies.

(11857)

14. Finally, Anglo-Iranian, Socony, Socal, Jersey, Texas, Gulf, Royal Dutch and others in furtherance of the aforesaid conspiracy and monopoly entered into a cartel arrangement called the Iranian Consortium, the purpose and effect of which was to formalize their control of substantially all Iranian petroleum and products, thereby bringing to final and complete frustration plaintiff's effort to market Iranian petroleum and produc-

V.

Effects

15. The alleged conspiracy has had among others the following effects:

(a) Defendants and others associated with them have acquired, to the exclusion of plaintiff, among others, control of vast quantities of Middle Eastern petroleum and products, significant quantities of which are imported into the United States and distributed in interstate commerce, at costs substantially below the cost of petroleum and products produced domestically.

(b) Plaintiff has been completely and utterly frustrated in his attempt to sell the fifteen million metric tons of Iranian petroleum and products (11858) which he had under contract from the National Iranian Oil Company as aforesaid.

(c) Plaintiff's advantageous business relationship with the National Iranian Oil Company has been completely and utterly destroyed.

VI.

Prayer

Wherefore, plaintiff prays:

1. That the aforesaid conspiracy and monopoly be declared unlawful and in violation of Sections 1 and 2 of the Sherman Act and Section 73 of the Wilson Tariff Act;

2. That judgment be entered against defendants and each of them for $109,260,000, being the amount equal to three times the damages sustained by plaintiff, with interest thereon;

3. That judgment be entered against defendants and each of them for the amount of reasonable attorneys' fees and the costs and disbursements of this action; and

4. That plaintiff be granted such other relief as to the Court seems just and proper.

Dated: New York, New York
June 28, 1963.

CASEY, LANE & MITTENDORF
Attorneys for Plaintiff
By /s/ SAMUEL M. LANE
Samuel M. Lane, a Partner
Office & P. O. Address
26 Broadway
New York 4, New York

Plaintiff demands trial by jury.

Notice of Motion, Dated April 8, 1960

(11189)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Sirs:

PLEASE TAKE NOTICE that the within motion will be brought on for hearing before Judge William B. Herlands at the United States Court House, Foley Square, New York, N. Y., in the Courtroom assigned to Judge Herlands, on April 25, 1960, at 10:30 A.M., or at such other time and place as he may fix for the said hearing.

Dated: New York, New York
April 8, 1960.

Yours, etc.

PAUL, WEISS, RIFKIND, WHARTON
& GARRISON
Attorneys for Defendant
Cities Service Co.
Office and P. O. Address
575 Madison Avenue
New York 22, N. Y.

To:

CASEY, LANE & MITTENDORF, Esqs.
Attorneys for Plaintiff
26 Broadway
New York 4, N. Y.

Motion for Summary Judgment, Dated April 8, 1960

(11190)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Defendant Cities Service Co. moves this Court for an order, pursuant to Rule 56 of the Federal Rules of Civil Procedure, for a summary judgment in its favor dismissing plaintiff's complaint as against it, on the ground that there is no genuine issue as to any material fact and that Cities Service Co. is entitled to a judgment as a matter of law, and for such other and further relief as this Court deems just and proper.

Dated: New York, New York
April 8, 1960.

PAUL, WEISS, RIFKIND, WHARTON
& GARRISON
Attorneys for Defendant
Cities Service Co.
Office and P. O. Address
575 Madison Avenue
New York 22, N. Y.

[The following affidavit was filed by plaintiff pursuant to an order of the Court below on June 10, 1964 but was missing from the files of the District Court when this appeal was docketed.]

Affidavit Submitted by Plaintiff in Opposition to Motion for Summary Judgment Pursuant to Order Dated May 22, 1964

[SAME TITLE]

State of Colorado,
County of Denver—ss.:

GERALD B. WALDRON, being duly sworn, deposes and says that he is the plaintiff in the above-entitled action and submits this affidavit in compliance with the order of this Court dated May 22, 1964 which directs him to serve and file an affidavit setting forth specific facts and evidentiary data constituting the particulars upon which he relies to show that there are genuine issues for trial with respect to (1) the existence of "business or property" within the meaning of § 4 of the Clayton Act, and (2) the infliction of direct and primary injury on said "business or property."

Business or Property

1. The business in which deponent engaged and for the frustration of which deponent seeks treble damages under § 4 of the Clayton Act was the business of buying, selling, and otherwise dealing in Iranian crude oil and the principal products refined therefrom, and in exploiting advan-

tageous relationships and opportunities growing out of said business.

2. The property injured by defendants, for which deponent seeks treble damages under § 4 of the Clayton Act, was the business enterprise described above and, within that general description, the contract negotiated with the National Iranian Oil Company (N.I.O.C.) in the name of Consolidated Brokerage under date of May 25, 1952 (SONJ Ex. 12), the agreement with Cities Service Company to pay deponent and his associates 1¢ to 2¢ per barrel on all Iranian production (SONJ Ex. W-343) and the advantageous relationship which deponent and his associates enjoyed with each of said companies.

3. The specific facts and evidentiary data upon which deponent relies to show that he did in fact devote himself to and engage in the business described above and that he did in fact possess and enjoy the property described above within the meaning of § 4 of the Clayton Act may be summarily outlined as follows:

Pre-Contract Activities

4. Deponent's first interest in Iranian oil took the form of a proposed barter of Puerto Rican sugar for Iranian oil in December, 1951 (Tr. 16; 233). Iran, at that time, was short of sugar and of foreign exchange with which to buy sugar but had crude oil in abundance (Tr. 1141-42). It was James A. Raphael of Teheran who first suggested to Richard S. Nelson of Denver the possibility of the barter

Affidavit Submitted by Plaintiff in Opposition to Motion for Summary Judgment Pursuant to Order Dated May 22, 1964

of Iranian crude oil for sugar (Tr. 24). Raphael, an Iraqi, was associated at that time with Valanejad, who was an Iranian, and Dufour, who was a Swiss, in the export-import business (Tr. 103; 111; 3903; 5886). Nelson, who was also engaged in that business (SONJ Ex. 1), had been for many years the Export Manager of Gates Rubber Company, one of the largest industrial enterprises in the Denver area (Tr. 6472-73). Nelson had travelled widely and had done business in Iran prior to this proposal (Tr. 6473; 6500). Nelson discussed the suggestion with deponent, who was in the food brokerage business in Denver (Tr. 9), and, together, Nelson and deponent opened negotiations with Juan Serralles of Puerto Rican American Sugar Refining, Inc. (Tr. 16-17), a large sugar refiner in Puerto Rico (Tr. 16-17). Serralles responded favorably, and agreement was reached in principle that the Iranians would deliver the oil, c.i.f. Puerto Rico, and take in return refined sugar, f.o.b. Puerto Rico (Tr. 5601; 577). Several meetings to work out the details of the contract were scheduled but postponed when the Iranians announced that they were unable to secure a tanker to transport the oil (Tr. 27-28; 232-33), and deponent and Nelson found that the only way they could secure a tanker for that purpose at that time was to buy one, which was beyond their means (Tr. 577; SONJ Ex. 71 and 72; SM Ex. W/N-1012).

5. When the barter of oil for sugar failed, deponent and Nelson turned to the possibility of buying Iranian crude oil and products, f.o.b. Persian Gulf, and, in that connection, canvassed a number of possible domestic buyers, including; Frontier Oil Company, Denver, Colorado (Tr. 39; 730; 747;

5198); Bay Oil Company, Denver, Colorado (Tr. 216; 581; 730; 746; 5734); Continental Oil Company, Denver, Colorado (Tr. 216; 747; 5735); Shamrock Oil Company, Amarillo, Texas (Tr. 30; 37; 41; 44; 5735); Hal L. Shockley & Company, Bellaire, Texas (Tr. 211; 223; 226; 5644; SONJ Exs. 32, 34); and W. A. Delaney, Jr., Ada Oklahoma (Tr. 37; 313; 749; 5742).

6. To the same end, and in fact commencing before the discussion of the proposed barter of oil for sugar terminated, deponent and Nelson by cable and letter opened negotiations with N.I.O.C. through Raphael, with a view to purchasing Iranian crude oil and products, f.o.b. Persian Gulf (letter Nelson to Enterprise, 12-21-51; cable Consolidated to Enterprise, 12-24-51; cable Enterprise to Consolidated, 12-24-51; letter Nelson to Enterprise, 1-8-52, annexed hereto). As early as January 29, 1952, in the course of these communications, Raphael reported that Prime Minister Mossadegh had quoted a price of $8 per metric ton, f.o.b. Abadan (SONJ Exs. 27(a), (b), 29).

7. By letter dated February 20, 1952, Raphael informed Nelson that Count Della Zonca had signed a contract with N.I.O.C. for 20,000,000 tons of Iranian crude oil to be delivered at the rate of 2,000,000 tons per year for ten years and submitted to Nelson the basis of a comparable long term contract at $8 per metric ton, f.o.b. Abadan (SONJ Ex. 9).

8. Recognizing the need for an experienced, independent oil man, not only to assist them with the drafting of

Affidavit Submitted by Plaintiff in Opposition to Motion for Summary Judgment Pursuant to Order Dated May 22, 1964

an appropriate contract, but also with the exploitation of such a contract if it could be obtained, deponent and Nelson made inquiries and were introduced by deponent's friend, Roy Timmons, to James A. Bentley of New York City by telephone in February, 1952 (Tr. 30; 34). Bentley had formerly been financial vice president of the Carrier Corporation, which he left in 1946 to engage in a management consultant business in New York City (Tr. 8368). He was also chief executive officer and principal stockholder of Oil Recovery Corp., a company which holds basic patents for and operates in the field of secondary recovery of oil (Tr. 8369). He was also president and principal stockholder of Carbonic Products Inc. (B.P. Ex. B-1100, p. 3). One of the early investors in the latter company was Nelson Rockefeller (Tr. 8603; B.P. Ex. B-1100, p. 3). Bentley lived in New York City where he had an office in the Chrysler Building (Tr. 8368). So convinced were deponent and Nelson of Bentley's knowledge of and standing in the oil business that they gave him an interest of fifty percent in their venture (SONJ Ex. W-138).

9. With Bentley's assistance in New York and Raphael's assistance in Tehran, deponent and Nelson worked out the terms of a proposal for the purchase of 14,000,000 tons of Iranian crude oil and/or refined products at $8.00 per ton for the first 2,000,000 tons, f.o.b. Abadan, and at the posted price for the Gulf of Persia less $2.00 per ton for the ensuing 12,000,000 tons, the total to be lifted over a period of five years. (SONJ Exs. 40, 10, 50, 45, 51, 56, 57, 60, 66, 67 and 68). An increase in the price to $8.75

Affidavit Submitted by Plaintiff in Opposition to Motion for Summary Judgment Pursuant to Order Dated May 22, 1964

per ton, first announced to Nelson by Raphael by letter dated April 16, 1952 (SONJ Ex. 13), eventuated, after further correspondence, in a proposal for 15,000,000 tons of Iranian crude oil and/or refined products at $8.75 per ton for the first 3,000,000 tons and at the posted Persian Gulf price less $2.00 per ton for an additional 12,000,000 tons, f.o.b. Abadan. (SONJ Exs. 11, 85, 88, 83). In making this announcement, Raphael enclosed a new draft of a proposed contract (SONJ Ex. 95).

10. With Bentley's assurances that if such a proposal were embodied in a contract, he, Bentley, had two major oil companies with tanker fleets and a third without a tanker fleet but with the ability to assemble one (Tr. 1655-58, 5211; SONJ Ex. 77) each of which was ready to take over any such contract, (SONJ Ex. 77) deponent and Nelson flew to Teheran on May 13, 1952 (Tr. 880). They had asked Bentley several times to identify the major oil companies from which he had commitments, but he had on every occasion informed them, with expressed regret, that he was strictly enjoined from revealing the names (Tr. 8395-96; SONJ Exs. 75, 77). Deponent and Nelson did not doubt that Bentley was telling the truth (Tr. 5684).

The Contract of May 25, 1952

11. Arriving at Teheran, deponent and Nelson met Raphael and almost immediately embarked upon a series of conferences with representatives of N.I.O.C. which eventuated, on May 25, 1952, in the signing of a contract

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with N.I.O.C. This contract (SONJ Ex. 12) accorded the right to Consolidated to buy 3,000,000 metric tons of crude oil and/or refined products from N.I.O.C. during the first 12 months and a like amount during each succeeding 12 month period for an additional 4 years, making a total of 15,000,000 metric tons, at a discount of $4.14 per ton for the first 3,000,000 and a discount of $2.00 per ton for the remaining 12,000,000. Purchases in excess of 3,000,000 tons per annum were to be at the $2.00 discount, and Consolidated was given the option to take at least half of the tonnage in refined products. Among the provisions of this contract which were particularly beneficial to Consolidated were one which granted Consolidated exclusivity for the United States market, one which permitted Consolidated to assign the contract in whole or in part, and one which looked to the appointment of Consolidated as N.I.O.C.'s agent for the whole or part of the United States. One aspect of the contract which was particularly favorable to Consolidated was that the contract did not require Consolidated to make any payment in advance. Another was that it did not require Consolidated to post a performance bond. The only consequence of Consolidated's failure to take deliveries on schedule was cancellation of the contract at N.I.O.C.'s option. The provision relating to exclusivity read as follows:

> *"Exclusivity.*
>
> Within the duration of this agreement, and provided the terms of this agreement are complied with, the First Party shall not offer for sale its crude

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> oil or refined products to other buyers for the United States market under any condition. In the event of a prospective buyer approaching the First Party for the purchase of Iranian oil products for the U.S.A. Market, then the First Party shall first advise the Second Party of such a deal, in writing, and the Second Party shall take all necessary steps, in so far as possible, to take care of the applicant's demand. If the Second Party within twenty days' time of receiving such an advice fails to take up the deal on the same terms and conditions proposed by the applicants, then, the First Party shall be free to sell to the applicant his requirements."

Finally, it was specifically provided in Clause 13 that "This agrement shall remain effective for the duration mentioned under clause two hereof despite any arrangements the Iranian Government or the First Party [N.I.O.C.] has undertaken or may undertake in the future with any other party or parties provided the terms of this agreement are satisfactorily carried out by the Second Party [Consolidated]."

Initial Post-Contract Activities

12. Returning to New York on June 3, 1952 (Tr. 1065), deponent and Nelson were introduced by Bentley to James E. Zoes (Tr. 791). Zoes was engaged at the time in selling steel pipe to oil, gas and chemical companies engaged in constructing pipe lines in the United States and other parts of the world (Tr. 9023). Bentley had assigned one-half of his interest in the venture to Zoes (Tr. 1908;

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9272). Deponent and Nelson were also introduced to Ray Carter at this time (1227-28). Carter had been associated for many years with Cities Service Oil Company, was well-known in the oil business, and, at the time, was engaged in the brokerage of crude oil and products. He lived in Greenwich, Connecticut and made his office at 70 Pine Street, New York City (SONJ Ex. W-258). Carter had been introduced to Bentley by Zoes (Tr. 1227-28).

13. Bentley informed deponent and Nelson that the three major oil companies from which he had had commitments now declined to take any Iranian oil, but that other efforts had been made to find purchasers (Tr. 2049). These efforts, as Bentley described them were divided into two classifications: first, there were the marketers which showed interest in delivered products; and second, larger companies who were interested in taking over the contract.

14. Among the marketers which Zoes had contacted were Sterns, Inc., Coastal Oil Company, Stendrup Oil Company and Connoil Corp.

Sterns, Inc.

15. Sterns, Inc., a New York company associated with Sterns Ltd. of Great Britain (Tr. 790; 792; 9432; 9435), indicated interest in June, 1952, in purchasing 15,000,000 barrels of No. 2 fuel oil and, possibly, some crued oil (Tr. 1724; 1739; 9431; 9439; SONJ Ex. B-1098). Sterns proposed to use this oil to supply electric power plants in the

New York area (Tr. 9432). In response to this interest, Zoes offered Sterns 15,000,000 barrels of No. 2 fuel oil, and quoted f.o.b. Abadan. He was then informed that Sterns had consulted its British parent company and could not accept any oil from Iran (Tr. 9435). It was explained that Sterns dealt in oil products all over the world; that it depended upon the major oil companies for its source of supply (Tr. 9435), and that it could not expect to do business with the majors if it dealt in Iranian oil (Tr. 9282-83; 9439).

Coastal Oil Company

16. Coastal Oil Company, a New Jersey distributor of fuel oil (Tr. 5609), was contacted by Zoes in June or July, 1952 (Tr. 1310; 1387; 5609-10; 9079). Mr. Gregory of that company indicated an interest in purchasing 1,000,000 barrels of kerosene, 1,000,000 barrels of No. 4, and 3,000,000 barrels of No. 2 fuel oil (Tr. 1310; 9424; SONJ Ex. B-135; SONJ Ex. B-141; SM Ex. B-1175). Gregory stated that his company would provide a letter of credit, and that it had access to the necessary tankers (Tr. 9341). He expressed the hope that his company could buy products from Consolidated at a discount of 6.5 mills per gallon under the Journal of Commerce listed prices (Tr. 1312; SONJ Ex. B-141) f.o.b. his company's tanks in New Jersey, but if this were not possible, he would be interested in purchasing f.o.b. Abadan, provided insurance could be secured which would reasonably protect his company (Tr. 1312). Nothing eventuated from these conversations, however, because, as Gregory put it to Zoes,

Coastal had such a close working relationship with its supplier, Standard Oil of New Jersey (Tr. 5609), that Iranian oil was too hot to handle (Tr. 5608). Gregory also feared litigation (Tr. 5609; 9430-31).

Stendrup Oil Company

17. Stendrup Oil Company, located in New York City, was contacted by Zoes in May, June and July, 1952 (Tr. 793; 9079). At one stage in the negotiations, it was suggested that the McCarthy Oil Company and Eastern States Petroleum Company join Stendrup in purchasing oil from Consolidated (Tr. 9403-05). Under this plan, the refining was to be done by Eastern States (Tr. 9405). Like other companies with which Zoes negotiated, Stendrup feared economic reprisals if it dealt in Iranian oil (Tr. 9282-83) and, consequently, it insisted upon such low prices (Tr. 9407-09) that no deal eventuated. As one Stendrup employee said, the proposal to deal in Iranian oil "takes more guts than I've got" (Tr. 9402; SONJ Ex. B-239).

Connoil Corp.

18. The Connoil Corp., a distributor of oil in New York City, was contacted between May and July, 1952 by Zoes (Tr. 792; 9079; 9410-20). Connoil said, as a start, they wanted to purchase 1,000,000 barrels of kerosene, 1,000,000 barrels of No. 2 oil, 1,000,000 barrels No. 5 oil and 1,000,000 barrels Bunker C fuel oil on a long term basis (Tr. 1727-28; 9413; SONJ Ex. B-238). The sale was to be

f.a.s. New York (Tr. 9414; SONJ Ex. B-238). But then interest waned when Connoil stated that though the prospect of buying Iranian oil was interesting, it did not think it worth alienating its suppliers, the major companies (Tr. 9416-17). Connoil officials expressed their fear of the major companies (Tr. 9418) and said they knew of the majors' opposition to any movement of Iranian oil (Tr. 9282-83).

Hunt Oil Company

19. Bentley and Zoes contacted Hunt Oil Company of Dallas, Texas through H. L. Williford, an executive of that Company (Tr. 1628; 1635-6; SONJ Ex. B-212). In Newsweek, May 21, 1951, it had been reported that H. L. Hunt, one of the biggest independent oil producers in the world, had gone to Iran, presumably to offer to manage the Iranian oil industry. This occurred at a time when it was also reported that various of the major American oil companies were interested in the same project (Newsweek, May 21, 1951, page 36, annexed). Williford said that Hunt was still keenly interested in taking over all Iranian production and refining and would be willing to take over Consolidated's contract and pay the Waldron group a royalty (Tr. 8415). Subsequently, however, Williford reported that Hunt was not interested (Tr. 161; 8423; SONJ Ex. B-212).

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Efforts to Sell the Majors

20. In June, 1952, Williford contacted several of the major oil companies, including certain of the defendants, on behalf of Consolidated (Tr. 782; 1623-29; SONJ Ex. B-211). These companies included Standard Oil Company of New Jersey (Tr. 782; 853); The Texas Company (Tr. 782; 853; 1617; 1626); Arabian-American Oil Company (Tr. 853-55; 1644; 1706); and Sinclair Refining Company (Tr. 1706; SONJ Ex. B-224). The price which Williford quoted was five cents a barrel on top of Consolidated's cost, f.o.b. Abadan, with one cent commission for himself (Tr. 1645-46; SONJ Ex. B-211). According to Williford, each of these companies refused to deal with Consolidated (Tr. 1645; 1651-52; SONJ Ex. B-211). Zoes also contacted Sinclair (Tr. 4127-28; 5419; 9473; SONJ Ex. B-795) without avail (Tr. 4128).

First National Oil Company

21. Serious discussions were opened with First National Oil Company of Long Island City, New York, in mid-June, 1952 (Tr. 751; 1262). In these discussions, First National was represented by Mr. Margolis, President of the company, and Messrs. Lyon and Ascher. Participating on behalf of Consolidated were deponent, Nelson, Bentley and Zoes (Tr. 751; 1326; 1337). First National Oil Company had participated in the movement of oil from Mexico following nationalization in that country (Tr. 752). At the first meeting, Margolis indicated that he

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wished to obtain No. 2 fuel oil (Tr. 754). At the second meeting, the discussion turned upon a proposal to assign Consolidated's contract to First National Oil Company (Tr. 1262). Bentley had prepared the draft of such an assignment (Tr. 1326; SONJ Ex. B-145). Bentley's proposal called for First National to put up a letter of credit for $200,000; to obtain tankers, the first of which was to arrive in Abadan by August 15, 1962; to pay the expenses and assume the risk of litgation with A.I.O.C.; and to store the oil in its shore tank facilities (Tr. 1322-23). Consolidated was to receive 20% of the profits realized by First National under the assigned contract (Tr. 1323; SONJ Ex. B-147). Margolis objected to forfeiture provisions suggested by Bentley (Tr. 1329-30; SONJ Ex. B-147), and discussed the need to renegotiate Consolidated's contract with respect to time provisions and prices for delivery to the West Coast (SONJ Ex. B-146), but this was to occur only after the initial stages of the contract had been performed (Tr. 1328-30; 8508). At the third conference in this series, Margolis said that he was negotiating with Asiatic Petroleum Company, which was closely affiliated with A.I.O.C. (Tr. 758; 1064; 1342), and was fearful that if he dealt in Iranian oil, his supplies would be cut off, as had happened before when he had purchased Mexican oil after nationalization (Tr. 759; 1064; 1342; 3860-61). He had therefore decided not to go any further with deponent and his associates but indicated that he might be interested in reopening negotiations after his deal with Asiatic was completed (Tr. 760; 1342).

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Other Prospective Purchasers

22. During the same period, that is to say, in June 1952, contacts were made with Riddell Petroleum Corporation of 30 Rockefeller Plaza, New York City; Ryan Oil Company of Denver, Colorado; Paragon Oil Company of New York City; Ashland Oil & Refining Company of Ashland, Kentucky and Kerr-McGee Oil Company of Oklahoma City.

23. Riddell told Zoes, after the details of the Consolidated contract had been given to him, that he would check with his supplier, a major oil company, and let Zoes know (Tr. 9469). Subsequently, Riddell telephoned to say that he would not touch this oil because the destiny of his company was linked with a major oil company (Tr. 9469-70; SONJ Ex. B-243).

24. Ryan Oil Company, which was planning to build a refinery on the Gulf Coast (Tr. 774; 1711-12), indicated an interest in acquiring 600,000 tons, or more, of Iranian crude (SONJ Ex. B-225), but was reluctant to become involved in litigation with A.I.O.C. (Tr. 1711-12) or with the companies which were backing A.I.O.C. (Tr. 1711-12) and, because no assurance could be given that such litigation would not result, Ryan never placed an order (Tr. 5737-38).

25. Paragon Oil, a marketer of fuel oil in the New York Area (Tr. 766; 3469; 3472; 5755) would have noth-

ing to do with Iranian oil (Tr. 5755) because of its fear of jeopardizing its association with and purchases from the Cartel companies (Tr. 3469; 3471; 5755).

26. When Zoes opened the subject with Ashland Oil & Refining Company through Rud Babor, vice president of Frontier Oil Refining Co., which was a division of Ashland (Tr. 1533; 9445-49), and quoted a price f.o.b. Abadan for crude oil, Babor said, "Are you kidding, trying to bring this oil here?" (Tr. 9447-48). When Zoes pressed him he replied "This is really a tough one and I doubt it very much. However, I will mention it to Ashland." (Tr. 9449). Nothing came of this.

27. In June, 1952, Mr. Kennedy, an officer of Kerr-McGee Oil Industries, Inc. called on deponent to discuss purchasing Iranian Oil (Tr. 767; 1845). Thereafter deponent was in contact with Kennedy from June, 1952, through June, 1953 (Tr. 2086; 4797). Kerr-McGee was interested in importing 20,000 barrels of crude a day (Tr. 3622; SONJ Ex. W/N-682), for a new refinery which it was planning to build (Tr. 3622). In March, 1953, Kennedy told deponent that Kerr-McGee was not interested in Iranian oil because of the reprisals they would suffer (Tr. 3861), by which he explained that Kerr-McGee feared that they would be put in an unfavorable position with respect to the price of oil at the well head and the use of pipe lines both of which were controlled by the "Majors" (Tr. 4807-4808). Then in June, 1953 he said that the situation was loosening up (Tr. 4798). He,

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therefore, once again consulted his superiors on the question of importing Iranian oil (Tr. 4803, 4813) and once again was told Iranian oil was too "hot" (Tr. 4813). Negotiations between Kerr-McGee and deponent ended on July 8, 1953, when Kennedy wrote to deponent, saying, "I am very disappointed to inform you that Kerr-McGee is not interested in the Iranian crude. The threat of reprisals is too great" (Tr. 4806; SONJ Ex. W/N-944).

Cities Service

28. It was Carter, who had been for many years employed by Cities Service, who conceived the idea of offering Consolidated's contract to Cities Service (Tr. 1775). Hill, who was W. Alton Jones' executive assistant and who is presently Cities Service's general counsel, testified that Cities Service was short 100,000 barrels of crude oil per day and could have used Iranian crude in lieu of the crude it was then buying from others (Tr. 10196). Consolidated's contract provided for 60,000 barrels per day for five years (SONJ Ex. 12).

29. Negotiations were opened with Cities Service on June 11, 1952 (Tr. 8841-2). Present on behalf of Cities Service were Messrs. Frame and Lowe, vice-presidents. Carter and Bentley represented Consolidated (Tr. 8842). Early in these discussions it appeared that Cities Service's real object was to take over the entire Iranian oil industry on a management basis for a fee to be paid in Iranian oil (Tr. 6165-6; 6182-3; SONJ Ex. B-254), and to that

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end, Cities Service desired the Prime Minister of Iran to address an invitation to W. Alton Jones, Chairman of the Board, to visit Iran (Tr. 2106-7). Bentley insisted that for such an invitation Cities Service should pay deponent $1,000,000.00 (Tr. 2027-28; SONJ Ex. B-295). When Bentley failed to make any progress in this direction, deponent and Nelson joined Carter in conducting the negotiations, in place of Bentley, and finally reached an agreement to the effect that Cities Service would pay deponent and his associates one cent to two cents per barrel on all Iranian production if they secured the invitation which Cities Service desired and if Cities Service suceeded in negotiating a management contract (Tr. 2186-7; 6165-70; SONJ Ex. W-343). Cities Service agreed, further, that anything it did in Iran, it would do through deponent (Tr. 1797-8; SONJ Ex. B-254) and that, if the management deal went through, Consolidated's contract would be merged into it (Tr. 1795; 6386-89).

30. On July 13, 1952, in pursuit of the invitation desired by Cities Service, deponent and Nelson flew for the second time to Teheran (Tr. 1483). With them they took not only a draft of the form of invitation which Cities Service desired (Tr. 2268), but also specially prepared brochures describing Cities Service in general and the Chairman of its Board in particular (Tr. 2106-7). After meeting with the Prime Minister, deponent and Nelson secured the desired invitation (copy annexed) and returned to New York where deponent delivered it to Shaw at the Cities Service office (Tr. 2327).

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31. On August 16, 1952, deponent, Nelson and, this time, Carter, flew once more to Teheran at the request of Cities Service to make arrangements for living accommodations for Jones and Cities Service personnel (7302-3). Jones (Chairman of the Board), Heston (Head of Crude Production), Frame (Head of Refining), Whetzel (Manager of Foreign Operations) and Robeson (Jones' Executive Secretary) followed soon after. (CS Ex. W-1034). It is reported that before Jones left for Iran, he consulted with President Truman and Secretary of Interior Chapman (Tr. 2220-1; 6221).

32. Jones and his team were most cordially received in Iran, were shown the refinery in Abadan and other parts of the nationalized facilities. Jones stated publicly and privately that the facilities appeared to be in good shape, that very little would be required to reactivate the industry, that technical personnel could be supplied from the United States on a temporary basis, and that permanent Iranian personnel could be trained in the United States eventually to take over the operation (Tr. 2222; 5467). The only serious problem, according to Jones, was transportation (Tr. 6237-38; Business Week September 27, 1952, page annexed).

33. Leaving Jones and his party, as well as Nelson and Carter, in Paris, deponent returned to the United States arriving on September 22 or 23, 1953 (Tr. 349) and immediately called on Leon Lemos to see what tankers might be available. Deponent and Nelson had conferred

earlier in the summer with Capt. George Lemos to discuss the possibility of securing tankers for Iranian oil (Tr. 133-4; 140; 157; 1068; 126). Captain Lemos had then indicated that if there were any political risks, blacklisting or boycott in prospect, it would be impossible for his company to entertain any proposal (SM Ex. B-1010). Leon Lemos, when told by deponent of the possibility of a Cities Service management contract, evinced identical concern over blacklisting (Tr. 5554), but stated that for a company of Cities Service's importance it would be possible to secure tankers in due course (Tr. 141; 147-8; 3033; 5296; 5554; 6289; CS Ex. B-1029).

34. With the foregoing information, deponent returned to Cities Service only to be told that Cities Service was no longer interested in Iranian oil. No explanation was vouchsafed (Tr. 143; 2752; 6325). Several months later, in January 1953, Cities Service entered into a long term contract for 20,000 barrels per day of Kuwait oil to be supplied by the Gulf Oil Corp., which was A.I.O.C.'s fifty/fifty partner in Kuwait (Plt's Ex. CS 8).

Sun Oil Co.

35. During the summer of 1952, Carter contacted J. N. Pew, Chairman of the Board of Sun Oil Co. of Philadelphia, one of the largest independent companies on the Eastern Seaboard (Tr. 3512). Pew was interested but hesitant, so Carter called again and offered ten million barrels of crude at $1.25 per barrel f.o.b. Abadan (Tr.

2460; 2464; SONJ Ex. B-376). Pew rejected the offer, saying he did not want to buy a lawsuit (Tr. 2460; 3494). Carter renewed the offer several times (Tr. 3513; 5259). Finally, on January 8, 1953 Pew wrote Carter "We are not in position to give this [offer] consideration at any price at the present moment" (SONJ Ex. C-669).

Efforts to Sell Aviation Gasoline to The United States Military

36. During the same time that deponent and his associates were seeking the invitation which Cities Service desired, they were in contact, through Carter, with Addison Brown. Brown was Chairman of the Oil Merchants Company, 1501 East 96th Street, Chicago, Illinois, a substantial midwest distributor of petroleum products (Tr. 9674). This company had also handled large quantities of petroleum products and, more particularly, aviation gasoline ("avgas") for the United States Military, and was a qualified Government bidder (Tr. 9682; 9745). Carter had known Brown for many years, Carter having brokered many cargoes for Brown (Tr. 9684; 9685). When Carter opened the subject, Brown indicated an interest in handling Iranian refined products, both for sale to the United States Military establishment and for commercial users in the United States (Tr. 9766-7).

37. Brown, in turn, contacted Lt. Col. E. J. Fourticq, head of the Fuel Section of the Material Contract Division of Supply and Services of the United States Air Force.

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Brown had had prior dealings with Colonel Fourticq, who was in charge of all purchases of avgas for the Air Force (Tr. 9688). Fourticq evinced great interest in Brown's proposal to supply Iranian avgas to the Air Force (Tr. 9693). He suggested that it could be picked up by United States Government tankers at Abadan and distributed in the Mediterranean area, thus obviating a 22 day haul from the United States (Tr. 9686; 9695; 9809). Based on extended conversations with Fourticq and others in the military establishment, Brown concluded that, as a starter, he could conservatively sell one or two tankers per week for six months to the Air Force (Tr. 9760-1). To this effect, Brown wrote to deponent on July 12, 1952, saying that his company was interested in making a purchase of 126,000,000 to 210,000,000 gallons of avgas, the first 126,000,000 to be lifted by United States tankers during the next six months and the balance during the ensuing four months (SM Ex. OM-1189). In addition to the avgas, Brown wanted 440,000 tons of regular gasoline, 109,000 tons of jet fuel, 113,000 tons of diesel fuel and 348,000 tons of No. 6 fuel for the Air Force. It was his opinion, based on his discussions with Fourticq and others in the military, that all of these products could be sold to the Air Force, f.o.b. Abadan, for lifting in Government tankers (Tr. 9800; SONJ Ex. B-388).

38. Brown indicated that if he were able to sell avgas and other refined products to the Armed Services, he wanted Consolidated to sell him, ton for ton, a like quan-

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tity of such products for Brown's commercial users in the United States (Tr. 9766-67).

39. On September 5, 1952, at Carter's suggestion, Brown offered the Air Force 10,000 tons of avgas (SM Exs. OM-1190-1). He received no formal reply to this offer (Tr. 9703). Accordingly, at Colonel Fourticq's suggestion Brown renewed his offer on December 15, 1952, addressing it directly to Colonel Douglas W. Brown, Executive Officer, Armed Services Petroleum Purchasing Agency, Washington (SM Exs. OM-1193, 1200). The offer was refused (SM Ex. OM-1199).

40. It was the belief of deponent, Carter and Brown that if just one Government tanker could have lifted oil from Abadan, A.I.O.C.'s blockade would have fallen. As Whetzel of Cities Service said, "I just wish to God you boys could get a tanker in there. I believe it would clarify the whole situation" (Tr. 6323). Between the first offer by Brown to the Air Force and the second to the Petroleum Purchasing Agency in Washington, deponent, Brown, and Carter, as well as various members and branches of the United States Government, sought to persuade A.I.O.C. to lift its blockade or, alternatively, to persuade the United States to break it with a Government tanker (Tr. 9803; 9809; SONJ Ex. Z-516; SONJ Ex. Z-503). According to Brown, ". . . various members of the Military felt keenly that this tremendous source at Abadan, which was under economic blockade or otherwise caused to be stopped should be made available to the United States Military in the crisis of shortage because they [United States Mili-

tary] were supplying, not only their requirements, but most of the rest of the world" (Tr. 9809).

Extension of Contract

41. Under Consolidated's contract, deponent was required to lift at least 400,000 tons before December 31, 1952, and to open with the Bank Melli, Iran, a letter of credit within 30 days of the signing of the agreement in the amount of $175,000.00 to cover the first 20,000 metric tons (SONJ Ex. 12). Failure to take delivery on schedule would result in cancellation of the contract (SONJ Ex. 12). Deponent and his associates had established a $200,000 letter of credit (SONJ Ex. W-284), but, for the reasons stated above, had not been able to lift any oil. Accordingly, as the year-end approached, so did the prospect of cancellation of the contract. With the assistance of the Iranian Ambassador to the United States, the Honorable Alleh Yar Saleh, deponent and Carter opened negotiations with N.I.O.C. for an extension of Consolidated's contract (SONJ Ex. W-258), and this was granted for 6 months by letter dated December 29, 1952 (SONJ Ex. W/N-557).

Efforts to Interest West Coast Purchasers

42. In view of the West Coast shortage of 100,000 to 200,000 barrels of crude oil per day (Tr. 389-90) it was thought that Consolidated could sell oil under its contract to West Coast purchasers.

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43. As early as June, 1952, Beloil Corporation Ltd. of Inglewood, California, indicated an interest in purchasing up to 3,000,000 tons of crude oil from Consolidated over a one year period (Tr. 1518-19). In November, 1952, deponent called at Beloil's office in California (Tr. 390; 768) and talked with Mr. Frazier of that company. Frazier said that he could handle 50,000 barrels a day (Tr. 2925) for sale in the United States Gulf Coast and in Asia (Tr. 5727), but he wanted it at 50% below the market price. Nothing came of these talks.

Sun, Ltd.

44. In December, 1952, and again in June, 1953, deponent conferred with Mr. Lindus of Sun, Ltd., located in Los Angeles (Tr. 391; 735; 3127; 3285-6; 3305). On three separate occasions deponent met Lindus in Los Angeles to discuss exploitation of Consolidated's contract (Tr. 734; 3327; 3387; 3711). In the course of these conversations, deponent supplied Lindus with the specifications of the oil which Lindus had requested (Tr. 3307; 3359; SONJ Exs. W/N-620-22) and explained the terms of Consolidated's contract. Lindus expressed his satisfaction (Tr. 3314-15; 3322; 5646) and said that he had two large West Coast companies which were interested in buying 20,000 to 40,000 barrels of Iranian crude oil per day under Consolidated's contract (Tr. 3180; 3309; 5663), provided that they got the "green light" from A.I.O.C. (Tr. 3180; 3325; SONJ Ex. W/N-578). Lindus was also interested in importing the oil himself (Tr. 3399). In this connection, he worked out a plan under which successive corporations would buy the

oil (Tr. 735; 3383; 3623; 5737), provide storage space (Tr. 3383), and secure tankers. (Tr. 3384; 3889). The price was to be $1.25 a barrel. (Tr. 400). Negotiations with Lindus were suspended in April, 1953, when N.I.O.C. announced that it would sell at a 50% reduction for six months (Tr. 3378-79). Lindus was unwilling to risk litigation with A.I.O.C. (Tr. 5496) and reprisals (Tr. 5645) for breaking the blockade if he were not going to receive a profit (Tr. 3378-79; SONJ Ex. W/N-753), and, of course, with Iranian oil selling at a 50% reduction, there would be no profit for him at $1.25 per barrel.

Northwest Oil Company

45. In March, 1953, deponent was contacted by Northwest Oil Company of Portland, Oregon (Tr. 186; 3477; SONJ Ex. W/N-656). Northwest indicated that it had storage capacity of 160,000 barrels (SONJ Ex. W/N-656) and was interested in a purchase contract which would keep one tanker fully occupied all of the time (SONJ Ex. W/N-658). It indicated, however, that it had been the victim of a freeze out by the major companies in 1952 and therefore would not want to buy Iranian oil until the threat of litigation with the British was over (Tr. 3481; 5633). Since this threat continued during the life of Consolidated's contract, no deal was ever made with Northwest (Tr. 5643).

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Time Oil Company

46. In June, 1953, deponent contacted Time Oil Company in Los Angeles and spoke to its president, Mr. Miller (Tr. 211; 396; 768; 3519; 3542). Time Oil operated a chain of filling stations, and Miller wanted to expand this business (Tr. 3545). In this connection, he proposed to rehabilitate a refinery north of Los Angeles capable of handling 4,000,000 to 14,000,000 barrels of crude oil a year (Tr. 393; 3548). For this he needed a long term supply of oil (Tr. 394; 3547). As he viewed it, Miller said that he would have to have a 25 to 50 year contract (Tr. 394; 3546) if he dealt with Iranian oil for, in that event, his other suppliers would cut him off (Tr. 210; 3546-7; 3856; 3860). Since the refinery would not be operable for seven to eight months, Miller proposed to commence by buying refined products under Consolidated's contract and, later, switching to crude oil (Tr. 393; 3549). He estimated his needs at 3,500,000 to 14,500,000 barrels per year. (Tr. 3596). Consolidated's contract was to be the starting point and was to be followed by a long term contract (Tr. 3561) which would have to be negotiated (Tr. 3551; SONJ Ex. W/N-674; Tr. 5723-24). Miller also informed deponent that, since any tanker which touched Iranian oil would be blacklisted (Tr. 3856), he would have to create his own tanker fleet (Tr. 3557).

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Richfield Oil Corporation

47. In June, 1953, deponent met with representatives of the Richfield Oil Corporation in Los Angeles, California (Tr. 186; 391; 3650-56). Richfield, a large, integrated company on the West Coast, was at that time and still is jointly controlled by Cities Service and Sinclair, each of which holds approximately one-third of the equity in the Company (Tr. 4128; SONJ Ex. B-795). At this confereence it was pointed out that there was a crude oil shortage of 100,000 to 200,000 barrels per day in California (Tr. 389; 399). Richfield's share of this shortage was 20,000 barrels per day (Tr. 399), and the Company was interested in purchasing such a quantity from Consolidated (Tr. 392; 3650-56). It was accordingly proposed that a contract be entered into for the delivery of crude oil to Richfield on the West Coast at 5% to 10% below the prevailing California price for one year with an option to renew at 5% (Tr. 339; 3650-1).

48. After examining the specifications of the Iranian crude oil which deponent submitted (Tr. 399; 3651), Richfield requested deponent to ship five gallons of the oil to Los Angeles by air (Tr. 399; 3651). Deponent had five gallons immediately flown to Denver from Iran and transshipped by truck to Los Angeles for analysis in Richfield's own laboratory (SONJ Exs. W/N-692, 835).

49. During the meeting in Los Angeles at the Richfield office in June, deponent explained the problems created

by the threats and fears of reprisals which he had encountered (Tr. 3650; SONJ Exs. W/N-690), but the Richfield representatives said that they were prepared to negotiate a contract with Consolidated if the specifications for the Iranian crude oil were acceptable (Tr. 3651; 4259). It was agreed, further, that Richfield would post a letter of credit (Tr. 4270) and help provide tankers (Tr. 3650).

50. In April, 1953, N.I.O.C. announced a 50% discount for 6 months (Tr. 3689; SONJ Ex. W/N-690). Still Richfield continued to negotiate with deponent under Consolidated's contract because the amount of oil which could be taken out of Iran during the 6 month 50% discount period was negligible in terms of Richfield's needs (Tr. 3689).

51. Notwithstanding the bright prospects raised by these dealings with Richfield, deponent was informed by telephone, in the Fall of 1953, that Richfield, after analysing its position, had decided that it had no need for Iranian Oil (Tr. 4272-74). Richfield took this position, admitting that the specifications on the Iranian oil were acceptable (Tr. 4272) and that the West Coast shortage still persisted (Tr. 4273). No further explanation was given (Tr. 4270-74). Subsequently, Richfield turned up with three "independent shares" in the Consortium: one for which it qualified on its own, and one each from Cities Service and Sinclair by assignment (Pltf's Exs. C.S. 77, 88).

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Holly Sugar Company

52. Iran depends upon beets for its sugar production (Tr. 3128); but the crop is inadequate and the refining facilities are outmoded (Tr. 1142; 3128). Accordingly, with the assistance and encouragement of the Iranian Ambassador (Tr. 4859; 4872), deponent contacted the Holly Sugar Company in Colorado Springs, Colorado, in January, 1953 (Tr. 770; 3127). Holly Sugar is one of the largest beet sugar producers in the Mid West (Tr. 3128; 3213).

53. After deponent had outlined the Iranian needs and had described Consolidated's contract, Merrill Shoup, president of Holly Sugar, indicated that his company would be interested in providing technical services and sugarmaking equipment to Iran in return for oil under Consolidated's contract (Tr. 3128; 3222-3; SONJ Ex. W/N-588). Specifically, the plan called for Holly Sugar to train Iranians in efficient sugar growing, harvesting, and refining methods; and to install sugar refineries in Iran (Tr. 3128; 3222-3; SONJ Ex. W/N-588). In return, Holly Sugar was to receive Iranian oil under Consolidated's contract (Tr. 3128). This oil was to be transported to an oil refinery in California owned by Holly Sugar (Tr. 3224) which was to be enlarged for the accommodation of the Iranian oil (Tr. 3225). Because tanker rates had dropped sharply to approximately $1.30 per barrel for delivery on the West Coast (Tr. 3238), the landed cost of the oil would have been $2.60 per barrel, as against the prevail-

ing market price on the West Coast at that time of $3.17 (Tr. 3238). It will be remembered that deponent's cost was $1.19 per barrel (Tr. 3238; SONJ Ex. 12).

54. Under the Holly Sugar plan, deponent was to use his good offices in Iran to facilitate the negotiation of a favorable contract. Deponent arranged a luncheon in Washington for Mr. Shoup with the Iranian Ambassador on February 17, 1953 (Tr. 3246-7; SONJ Ex. W/N-588). Deponent also secured approval of the plan from the State Department (Tr. 3249), and set about to obtain an official invitation for Mr. Shoup from the Iranian Government (Tr. 3225; 4874; 4881; SONJ Exs. W/N-967-970). Deponent's compensation was to be a share of the profits from oil sales made by Holly Sugar (Tr. 5834).

55. Notwithstanding the seriousness with which negotiations had been pursued with Holly Sugar, they came to nothing (Tr. 3217). Despite the drop in tanker rates (Tr. 3238), it was difficult, if not impossible, for Holly Sugar to obtain tankers to carry Iranian oil (Tr. 4857). Furthermore, as early as April, 1953, Holly Sugar took the position that it could not conclude any Iranian transaction until the legal problems growing out of the dispute over the nationalization of Iran's oil were resolved (Tr. 3508; SONJ Ex. W/N-666). Subsequent negotiations with Holly Sugar were attempted, but the case became hopeless when the Consortium took over (Tr. 3274-5).

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General Observations

56. To the prosecution of the business described in the foregoing paragraphs and in carrying on the negotiations which have been outlined above, deponent devoted the major part of his time from December, 1951, until June, 1953, and a very substantial part of his time between June, 1953, and the commencement of the lawsuit in June, 1956 (SONJ Exs. 78, 78A). From December, 1951, to June, 1953, the business upon which this lawsuit is founded was deponent's primary business interest and concern, and his food brokerage business was largely neglected and left to subordinates (Tr. 4134, 4168). The expenditure in money (Tr. 4130-32), viewed in relation to deponent's financial resources (Tr. 5036), was heavy; and the expenditure in time, work and worry (Tr. 5015) was enormous, by anybody's standards. To do what deponent did in the furtherance of the business in question required, in addition to the three trips to Iran, many trips to the East Coast and the West Coast of the United States, and a great deal of writing, cabling, telegraphing and telephoning. Even the personal physical risks were considerable (Tr. 7223-24).

57. Deponent's former associate, Nelson, devoted the major part of his time to the Iranian venture from December, 1951, to November, 1952 (Tr. 4134; 6664-74; 8195). Carter devoted the major part of his time to it from July, 1952, to January, 1953 (Tr. 1228; SONJ Ex. W-258). Bentley and Zoes devoted substantial parts of their time to it from February and May, respectively, until the fall

of 1952 (Tr. 8379; 8808; 9485). Each of these former associates also wrote many letters, made many telephone calls and attended many conferences. In addition, Carter accompanied deponent and Nelson to Iran on their third trip (Tr. 6226).

58. Self-serving as the statement may be, there was no time during deponent's active prosecution of the Iranian venture when he failed to pursue any avenue which seemed to him to present any prospect of exploiting Consolidated's contract with N.I.O.C., or the agreement which he and his associates had with Cities Service or the advantageous relationship which they enjoyed with those two companies. For the purposes of this motion he relies upon the facts set forth above and the documentary evidence referred to, and he does not suggest that the Court should look further, but he points out that defendant's motion is based on the whole record and that there are many other activities upon his part or upon the part of his former associates which are described in that record but not touched upon here.

Interference with Business or Property

59. In the absence of an opportunity to conduct discovery proceedings, deponent cannot be as specific as he would like to be in setting forth specific facts and evidentiary data show that defendants prevented him from exploiting the Consolidated Brokerage contract and the advantageous business opportunities which he enjoyed in Iran and the United States but he offers the following:

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60. Upon information and belief, defendants and certain French and Dutch interests at all the times in question constituted a cartel which controlled substantially all of the oil production, oil refining and oil pipelines in the Middle East and, either directly or, because of their economic power indirectly, substantially all of the oil tanker tonnage. (See complaint in *United States* v. *Standard Oil Co. (New Jersey), et. al.*, Civil Action No. 86-27, S.D.N.Y., and the consent decrees entered therein by Jersey, Gulf and Texaco, 1960 Trade Cas. ¶ 69,849 (S.D. N.Y. 1960); 1960 Trade Cas. ¶ 69,851 (S.D.N.Y. 1960); 1963 Trade Cas. ¶ 70,819 (S.D.N.Y. 1963); and Federal Trade Commission Staff Report of 1952, *The International Petroleum Cartel,* issued by the Select Committee on Small Business of the Senate, Committee Print No. 6, 82d Cong., 2d Sess. (1952) at pp. 22-29, annexed).

61. Upon information and belief, defendants and said other interests controlled most of the oil production in Venezuela, which was the other principal source of crude oil outside of the United States at that time (Ibid).

62. Upon information and belief, defendants and said other interests controlled most of the Free World's operations in producing, refining and transporting oil and refined products, and fixed the price thereof (Ibid).

63. Upon information and belief, it was in the interest of defendants and said other interests to maintain and perpetuate their dominant position in oil production, oil refining, oil transportation and oil marketing, and, to

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that end, to frustrate Iran's bid to capture control of its own oil industry and sell its oil and refined products in world markets at such prices as it might determine (Business Week, Sept. 27, 1952, p. 29, annexed).

64. Accordingly, defendants and said other interests made common cause with A.I.O.C. in boycotting Iranian oil, and, in that connection, declined to buy any Iranian oil from N.I.O.C. or from deponent while, at the same time, bending every effort to assist A.I.O.C. to supply world needs from other sources so as to keep Iranian oil off the market until Iran should capitulate (SONJ Ex. B-211).

65. At the same time, A.I.O.C. by newspaper announcements (SONJ Ex. W-660) and by letters addressed to deponent and his associates through A.I.O.C.'s counsel, Sullivan & Cromwell (SONJ Ex. W-659), gave notice that they would prosecute anyone who had the temerity to deal in Iranian oil, and they implemented that threat by seizing and condemning the tanker "Rose Marie" at Aden (Tr. 1597-98) and by tying up cargoes in Italy and Japan by litigation. (*Anglo-Iranian Oil Co.* v. *S.U.P.O.R.*, [1953] Int'l L. Rep. 19, 47 Am. J. Int'l Law 509 (1953) (Civil Tribunal of Venice 1953); *Anglo-Iranian Oil Co.* v. *Idemitsu Kosan Kabushiki Kaisha*, [1953] Int'l L. Rep. 305 (Dist. Ct. of Tokyo, High Ct. of Tokyo, 1953).

66. Upon information and belief, by the solidarity of their support of A.I.O.C. in the Iranian crisis, and by the hostile reaction which they had previously exhibited to

the nationalization of the Mexican oil industry, and, deponent believes, in less subtle ways, defendants made plain generally to the world and particularly to independent oil companies which were dependent on them for their crude and refined oils, and to tanker operators that they would rue the day that they ever bought or agreed to transport Iranian oil before the Iranian crisis was settled on defendants' terms.

67. When the Iranian crisis was settled, the settlement took the form of a surrender of Iran's nationalized oil industry to a Consortium of the very companies which had forced Iran to capitulate and the exclusion of all independents except for a 5% interest which was made available to them to obscure the appearance of monopoly (Plaintiff's Exs. C.S.-40).

68. Without repeating what has been stated in the first 58 paragraphs of this affidavit, as evidence of the effect of defendants' control of the oil industry, both international and domestic, upon deponent's endeavors to prosecute the business described in said paragraphs, deponent cites the following:

(a) Deponent and his associates were denied a letter of credit by the Chase Bank, called for by Consolidated's contract, on June 19, 1952, notwithstanding that all of the terms had been agreed upon, all of the conditions met and the collateral tendered (Tr. 1881-83; 1891; 7066-67; SONJ Ex. W-270).

(b) Every tanker owner, operator and broker contacted

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by deponent and his associates expressed a fear of threats and reprisals should he agree to transport Iranian oil (Tr. 1868-70; 3298-3301).

(c) Deponent and his associates were unable to secure insurance in the Western Hemisphere to cover Iranian oil (Tr. 2756-58).

(d) Deponent and his associates were able to provoke immediate interest in the purchase of Iranian oil, either for cash or on a barter basis in a great many quarters, but never with defendants or other major domestic companies (SONJ Ex. B-211) except Cities Service, and in every case when interest was manifested, it withered before agreement was reached, no matter how favorable the price.

(e) Even Cities Service, which faced a daily shortage of 100,000 barrels of crude oil and which was looking for a Middle East source (Tr. 5272; 5584; 10196), dropped all interest in Iranian oil after going to great lengths in pursuit of it (Tr. 6400); dropped it without any explanation to those who were responsible for providing Cities Service with the opportunity, which it coveted, to take over the management of the entire oil industry in Iran (Tr. 6325).

(f) Even Richfield Oil Company, which also faced a daily shortage of 20,000 barrels of crude oil (Tr. 399) and showed the keenest interest in covering this shortage with Iranian crude oil under Consolidated's contract (Tr. 392; 3650), dropped it notwithstanding the highly favor-

able landed cost of Iranian oil on the West Coast (Tr. 5669) and, again, without any explanation to those who had the capacity to fill its needs (Tr. 4272-73).

69. The price under Consolidated's contract was right, the opportunity to secure an enormously valuable supply of Middle East oil on favorable terms was obvious, but, as Herbert Hoover, Jr., explained to Messrs. O'Brien and Hill of Cities Service on February 19, 1954, when the Consortium was in the process of formation, "A.I.O.C. took the attitude that any company who participated in the deal [the Consortium] would have to have two qualifications: (a) be a producer of Middle East crude so that they could cut back their production to make room for the Iranian oil; and (b) be a marketer in the Eastern Hemisphere since that was a normal market for Iranian crude and products" (Plaintiff's Ex. C.S.-40). Deponent did not meet these qualifications, nor did anyone else except the seven international majors. As Hill of Cities Service put it, the proposed consortium was "creating a monopoly of substantially all world oil reserves in a few large companies." (Ibid) "Mr. Hoover suggested the possibility of anouncing this opportunity for the independents at the same time the plan is officially approved in order to remove some of the monopoly sting" (Id.).

70. Deponent is grateful for the opportunity which this Court has given him by its order of May 22, 1964, to set forth the facts insofar as they are presently known to him and only regrets that he has not sooner submitted such an affidavit as this. If the Court concludes that some phase of

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plaintiff's position is still unclear or if deponent has again failed to comply with the Court's direction, he will attempt to respond to whatever further direction the Court may give him.

Wherefore, deponent respectfully prays that defendants' motion to dismiss the complaint and for summary judgment be denied.

/s/ GERALD B. WALDRON
Gerald B. Waldron
Plaintiff

(Sworn to June 9, 1964).

Notice of Motion, Dated September 15, 1964

(11922)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Sirs:

PLEASE TAKE NOTICE that the undersigned will bring the within motion on for hearing before Honorable William B. Herlands, United States District Judge, at a time and place to be determined by the Court.

Dated: New York, New York
September 15, 1964

Yours, etc.,

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(11923)

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Notice of Motion, Dated September 15, 1964

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Motion for Discovery, Dated September 15, 1964

(11924)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

MOTION FOR PRODUCTION OF DOCUMENTS AND ORAL DEPOSITIONS

Plaintiff moves pursuant to Rule 56(f) of the Federal Rules of Civil Procedure for an order directing:

1. The production of all documents in the possession, custody or control of Cities Service relating to Cities Services efforts to obtain an interest in or otherwise to deal in Iranian oil during the preiod June 1952 through January 1955, including any written statements by employees or agents setting forth their activities on behalf of Cities Service in respect of said efforts during said period; and

2. The production of all documents in the possession, custody or control of the other defendants to this action, or any of them, relating to Cities Service's efforts to obtain an interest in or otherwise to deal in Iranian oil during the period June 1952 through January 1955; and

3. The production of all documents in the possession, custody or control of Ray Carter relating to his efforts to assist Cities Service, plaintiff or others to (11925) obtain an interest in or otherwise to deal in Iranian oil during the period from June 1952 through January 1955,

including any written statements, comments or transcripts prepared or assisted in by Carter for any defendant herein after commencement of this action concerning said efforts; and

4. The examination of Ray Carter by oral deposition in respect of his efforts to assist Cities Service, plaintiff or others to obtain an interest in or otherwise deal in Iranian oil during the period from June 1952 through January 1955; and

5. The examination of defendants by oral deposition of such of their employees or agents as may to the Court seem just and proper upon plaintiff's application after the document production herein shall have been made.

The persons directed to produce the foregoing documents have possession, custody or control of them; it is believed that each of the documents contains evidence relevant and material to plaintiff's opposition to Cities Service's pending motion for summary judgment; Ray Carter had extensive dealings with Cities Service, plaintiff and others in connection with Cities Service's efforts to obtain an interest in or otherwise to deal in Iranian oil during the period from June 1952 through January 1955 as is more fully shown in the affidavit of Samuel M. Lane, submitted herewith.

CASEY, LANE & MITTENDORF
Attorneys for Plaintiff
Office and P. O. Address
26 Broadway
New York 4, New York

Affidavit of Samuel M. Lane, Dated September 15, 1964

(11926)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

SUPPLEMENTAL AFFIDAVIT IN OPPOSITION TO CITIES SERVICE'S MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF PLAINTIFF'S MOTION FOR ADDITIONAL DISCOVERY

State of New York,
County of New York—ss.:

SAMUEL M. LANE, being duly sworn, deposes and says that he is an attorney and counselor at law and a member of the firm of Casey, Lane & Mittendorf, attorneys for plaintiff in the above-entitled action, and submits this affidavit in opposition to the pending motion of defendant, Cities Service Company, for summary judgment, and alternatively, in support of plaintiff's application for further examination and discovery in opposition to said motion.

1. The first purpose of this affidavit is to demonstrate that, through the limited examination of the surviving Cities Service officers, Watson, Frame, and Heston, who participated in Cities' Iranian venture and the limited discovery of Cities' documents in that connection, sufficient evidence has been adduced to defeat Cities' pending motion (11927) for summary judgment. In the event that the Court does not agree that sufficient evidence has now been presented from the mouths of these three witnesses

and their papers, the second and alternative purpose of this affidavit is to support plaintiff's application for further and more meaningful examination and discovery in aid of his opposition to Cities' motion.

2. The principal elements of plaintiff's claim against Cities Service, as plaintiff himself has testified and as the documents produced by him show, may be briefly summarized as follows:

(a) Cities was short of crude oil (Printed Transcript of Depositions, Page 6069, hereinafter referred to by page number alone);

(b) Cities wanted to acquire Middle East production (6071);

(c) Through Carter, a trusted former Cities employee, Cities entered into negotiations, first with plaintiff's associate, Bentley (8842), and then directly with plaintiff himself (6161), to secure an invitation from Prime Minister Mossadegh to Cities' president W. Alton Jones, to inspect the nationalized oil facilities in Iran with a view to reactivating the Iranian oil industry (6163);

(d) Cities agreed to reimburse plaintiff for his expenses (6195) and to compensate him handsomely if he secured such an invitation and an arrangement was made between the National Iranian Oil Company and Cities (SONJ Ex. W-343; 6166);

(11928)

(e) Cities enjoined plaintiff, his associates, and its own personnel to maintain utmost secrecy with respect first, to securing the invitation (6182) and, second, to exploiting it (6222);

(f) Plaintiff and one of his associates went to Iran at Cities' expense and secured the desired invitation (6202);

(g) Elaborate steps were taken to give the invitation the appearance of spontaneity (6203-04);

(h) Jones accepted the invitation (6210-11);

(i) Plaintiff and his associates returned to Iran in advance of the Cities party to secure appropriate accommodations (6229);

(j) Jones followed with a team of experts: Frame for refining, Heston for production, and Whetsel for transportation. He also took Robeson, his secretary (6228-29);

(k) The experts, after inspecting the oil fields, the refinery at Abadan, and the docks there and at Bandar Mashur, reported that, contrary to popular belief, there had been no sabotage and that all of the installations were well-maintained (6237; 6250);

(l) Jones on the one hand and the Iranians on the other were eager to have Cities take over the management of the Iranian oil industry, each for their own interest (6220; 6236; 6243);

(m) Jones told plaintiff, the Iranians, and the press that he was not afraid of British opposition to the reactivation of the Iranian oil industry and the sale of Iranian oil in world markets (Pltf's Exs. 136A-H; 6211);

(n) Jones told plaintiff, the Iranians, and the press that tankers were a serious bottleneck but that this problem could be overcome in time (6237-38);

(o) Plaintiff, leaving the Cities party in Paris, returned to New York to see what could be done about tankers, and found that, for such a company as Cities, substantial tonnage could be assembled in relatively short order (SM Ex. B-1010; CS Ex. B-1029; 6287);

(p) At that point, plaintiff was told that Cities had no interest in Iranian oil (6325);

(q) Thereafter, Cities interfered with plaintiff's efforts to market Iranian oil (6086-87).

3. The two Cities witnesses who could have been of greatest service in corroborating plaintiff's testimony were W. Alton Jones, Chairman of Cities' board, and R. Victor Whetsel, head of foreign exploration. During the pendency of this action, and while plaintiff was stayed by order of this Court from examining them, they died. However, the testimony of Watson, Frame and Heston supports to a significant degree practically every material element of plaintiff's case and so do the handful of documents which Cities' counsel produced. The prior deposition of Cities' general counsel, Hill, is described in an earlier summary, submitted to the Court in August, 1963.

(a) *Cities' need for a source of crude oil.*

It is axiomatic in the oil industry that unless an oil company owns enough oil in the ground to meet the bulk of its daily refinery needs, it is at the mercy of (11930) the big international suppliers, viz B.P., Shell, Esso, Socony, Socal, Texaco and Gulf (Federal Trade Commission Staff Report, *The International Petroleum Cartel,* issued by the Select Committee on Small Business of the Senate, Committee Print No. 6, 82d Cong., 2d Sess. (1952) at pp. 32-

33). In 1952 Cities owned less than half of the crude oil production that it needed to meet its daily requirements (10196) and was, therefore, a big buyer of crude (10482, 10488). The shortage amounted to perhaps 100,000 barrels per day (10196), with 20,000 to 30,000 barrels per day of this shortage on the East Coast (10782). Cities then owned no foreign production in the Middle East (10477) or, apparently, anywhere else (10987).

(b) *Cities' desire to purchase Middle East production.*

Cities has tried for years to obtain Middle East production (10477, 10480, 10482, 10780). In 1948, Jones and Watson talked to Col. Drake, chairman of the board of Gulf, about buying part of Gulf's interest in Kuwait (10477). They tried again without avail in 1951 (10780), but made no further move in the direction of acquiring Iranian production until plaintiff and his associates entered the picture in June, 1952 (10482-3), although Cities' interest in Iranian oil was "considerable" (10483, 10493), and Jones may have gone over the possibilities from time to time with Nakasian and Rieber (10484). Samuel Nakasian, Esq. is a member of the New York bar who, deponent is informed, was consultant to the Iranian government on oil matters during certain periods (11931) of the nationalization crisis and was working on a plan for the organization of a group of American independents to take over the management of the Iranian oil industry. Torkild "Cap" Rieber, who had been removed as chairman of the board of Texaco because of his Nazi sympathies (10296; Engler, *The Politics of Oil,* 200 (1961)) was active at this time as advisor to the World Bank in its attempt to solve the Iranian crisis (Walden, *The International Petroleum*

Cartel In Iran—Private Power And The Public Interest, 11 Journal of Public Law, 64, 103-4 (1962)), and later served as oil advisor to the Iranians (O'Connor, *The Empire of Oil,* 330 (1955)).

In Watson's opinion, oil could be produced in Iran "about as cheaply * * * as anywhere in the world" (10579). He testified: "If we could get a concession well located geologically, it would be the best hunting ground we thought in the world for giving us a long range crude supply, particularly if we could get it on the basis of the last concessions they had granted, which is a 50-50 basis. We could have reason to expect to put oil on board a tanker at costs somewhere approaching the most efficient oil field in the world, the Bergan Field in Kuwait. We didn't know anywhere else in the world that the prospects looked that bright to us" (10578).

(c) *Cities' negotiations with plaintiff and his associates to secure an invitation from Prime Minister Mossadegh.*

Frame confirms that he and Lowe, who was then "in charge of supply and distribution within Cities (11932) Service Petroleum, Inc." (10294), met with Carter, the trusted former Cities' employee, and plaintiff's asociate, Bentley, in a private dining room at the Lexington Hotel in June, 1952 (10293, 10295) where they had "quite a discussion of the Iranian situation" (10299). Frame gathered the impression "that Carter and Bentley felt that they had contacts with the then government of Iran" (10299) but "that is about the sum and substance of it" (10299). He claims to have no recollection of any subsequent meeting or that the subject of a possible invitation from Prime Minister Mossadegh was ever discussed (10304). In the

light of Bentley's contemporaneous memoranda of the meetings (SONJ Exs. B-253-57; 296, 297, 300, 302) and the fact that, following these meetings, plaintiff and his associate, Nelson, went to Iran, secured an invitation to Mr. Jones from Prime Minister Mossadegh and returned immediately to New York with it, Frame's asserted lapse of memory is, in deponent's opinion, incredible. But, at least, he corroborates the fact that there was a meeting which he and Lowe attended with Carter and Bentley in a private dining room at the Lexington Hotel at which contacts with the Iranian government were discussed (10295), and he denies none of the facts to which plaintiff and his associates testified with regard to their negotiations looking to the Mossadegh invitation (10304-05).

(d) *Cities agreement to reimburse plaintiff for his expense and to compensate him if he secured the invitation.*

Watson dances a jig on the question of Cities' agreement to reimburse plaintiff for his expenses in going (11933) to Iran to seek the desired invitation, but the net effect is to corrborate plaintiff's testimony that Cities agreed to foot the bill. Watson says that Carter was to finance the trip but that Lowe was to see that Carter was reimbursed through brokerage commissions from Cities. 'Indirectly I am confident we did pay their expenses through Carter * * *" (10673).

Watson did not attend the Echo Lake Country Club dinner meeting with Lowe, Carter, Waldron and Nelson at which plaintiff asserts he was promised compensation at the rate of 1¢ to 2¢ a barrel (SONJ Ex. W-343; 6163). Nor does he have any recollection of having discussed the meeting with Lowe afterwards (10525). He, therefore,

is not in a position either to admit or deny that the promise was made, and his assertion, twelve years after the event, that he would not have agreed to any such compensation (10533) is of no probative effect. Obviously, plaintiff and his associate, whose financial stringencies have been made so much of by some of the defendants in this litigation, did not agree to make the trip and take the risks for love alone.

(e) *Cities maintained strict secrecy with respect to the Iranian venture.*

Plaintiff's testimony that Cities' Iranian venture was shrouded in the most complete secrecy is corroborated a hundred fold by word and deed.

Watson's memorandum of August 8, suggesting what Cities might undertake in Iran is marked "SECRET—DRAFT—SECRET" (Pltf's Ex. CS-94).

(11934)

A secret cable code was prepared (Pltf's Ex. CS-100) and used (Pltf's Exs. CS-102B, 104B, 110; 10590).

Each member of Jones' party was cautioned to maintain secrecy (10340, 10893, 10618), and even communication by the members of the Cities group with their wives was cut off (10899).

The Cities team flew to Iran in separate groups in order, no doubt, to minimize attention, Waldron, Nelson and Carter going first, Heston and Whetsel following, and Jones, Frame and Robeson bringing up the rear (10882).

Upon their arrival in Tehran, the identity of the members of the Cities group was, at first, withheld from the press (Pltf's Exs. CS-136A, 136D) and elaborate precau-

tions were taken to avoid contact with the press (Pltf's Exs. CS-136A, 136E).

Not only were the members of the Cities group admonished to keep quiet about their trip (10618, 10620, 10893, 10340) and to refrain from talking to reporters (10619-21), but Cities, itself, released a most misleading statement to the press in New York (Pltf's Ex. CS-103) and refrained from answering a series of pointed inquiries submitted by the Oil and Gas Journal (Pltf's Ex. CS-113).

(f) *Cities endeavored to lead others to believe, contrary to the fact, that the invitation was unsolicited.*

Plaintiff's testimony that the invitation was made by Cities to appear unsolicited is corroborated by Jones' statement to the press in Iran that it was "entirely unsolicited" (Pltf's Ex. CS-136G) and by his statement to (11935) the Honorable Oscar Chapman, Secretary of the Interior, on August 12, 1952, when he wrote,

> "You will understand that the Mossadegh invitation came unsolicited * * *" (Pltf's Ex. CS-95).

In truth, the idea and even the form of the invitation were generated in New York (Pltf's Ex. C-127). First revelation of the truth came from a spokesman for the Iranian government who informed the Iranian press, in direct contradiction of Jones, that Jones had asked to be invited to Iran (Pltf's Ex. CS-136E). Watson's efforts, in the face of the overwhelming evidence to the contrary, to square with the truth the statement made by the man whom, obviously, he idolized (10502, 10534), is so grotesque (10603) that the reader is left in doubt that there is anything that such a witness has said that can be relied upon.

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Watson's pitch was that the invitation was not solicited by Cities because it was originally Carter's idea (10495); all Cities did was "indirectly" to pay the expenses (10673), and supply "certain reading matter" (biographical material in praise of W. Alton oJnes as the head of the greatest independent oil company in America!) (10603). He insisted that Jones, himself, was kept in ignorance of what was going on (10603), until the bird was in hand (10478). The falsity is transparent.

(g) *Plaintiff and his associate, Nelson, went to Iran and secured the invitation.*

This has never been disputed. Even Watson admits it (Pltf's Ex. CS-99; 10603).

(11936)

(h) *Jones accepted the invitation.*

This took place, of course, only after Jones had misled Secretary Chapman as to the origin of the invitation (Pltf's Ex. CS-95). A copy of the acceptance letter, supplied to plaintiff's counsel after the close of the deposition, is annexed hereto as Exhibit A.

(i) *Plaintiff and his associates returned to Iran in advance to secure, and did in fact secure, suitable living accommodations for Jones and his party in Tehran.*

This is admitted (10616).

(j) *Jones and his experts followed.*

This is admitted (10882).

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(k) *The experts reported that there were no impediments to an immediate resumption of operations.*

Frame found the great refinery at Abadan in good shape (10362); Heston found the oil fields and pipe lines in good shape (10908); and Whetsel reported the docks and loading facilities at Abadan ready for shoal draft vessels and at Bandar Mashur for deep draft vessels (Pltf's Exs. CS-106, 107; 10363). The difficulties attendant upon increasing production of crude and refined products were considered and found not to be insurmountable (Pltf's Exs. CS-106, 107; 10908).

(l) *Jones was eager for Cities to take over the management of the Iranian oil industry, the Iranians were eager to have Cities do so, and neither he, nor they, wanted Anglo-Iranian or the other Cartel Companies to take over.*

What the Iranians wanted they stated in their invitation (Pltf's Ex. CS-99) and is so obvious it goes (11937) without saying (10356).

What Jones and the other Cities executives wanted is also plain enough, no matter how hard the survivors now try to obscure it. The Mossadegh invitation, apparently for the first time, presented Cities with the opportunity to secure a position in the Middle East (10578), in fact, to play the major role in Iran (10566).

Cities' plan, from the very outset, was to organize and lead a consortium of independent American oil companies which would manage the Iranian operations (10565), taking payment in oil (10574), and anticipating opportunities to secure valuable oil concessions (10578). Companies already established in the Middle East were to be excluded (10572). Anglo-Iranian was to be compensated for its

expropriated Iranian properties through the sale of oil, and this, at the same time, would provide markets and transportation for the output (10569).

Thus, Watson's secret memo of August 8, 1952 (Pltf's Ex. CS-94), starts with the premise that the Iranians and the British can never reconcile their differences, and advocates that "American oil companies only which have no present interest in the Middle East" "furnish the necessary technical and supervisory personnel" and take over the management of Iranian oil operations under a contract which would give the managers not only a long-term option to purchase crude oil "at a discount under going prices for similar grades in U.S. after allowing for changes in import duties and transportation costs" but would also give them "first refusal on any future concessions for oil exploration within the country". The memo concludes with the (11938) suggestion that if the British Government and the Anglo-Iranian Oil Company, which controls the transportation and markets for Iranian oil, will cooperate, it ought to be possible to work out an arrangement "under which a satisfactory percentage of the avails of operation would be paid to the British on account of their former properties".

Under this plan, "[t]o assure definite responsibility one company [was] to have 51% interest" (Pltf's Ex. CS-94). That company, obviously, was Cities Service. Watson's unwillingness to concede that this was the case only throws doubt on his credibility (10565). Asked about his memo (Pltf's Ex. CS-94), Watson testified, "Mr. Jones, I believe, shared my views [that Iran was the best hunting ground in the world for oil]. We thought it was one way in which we could do a service over there and get the

first refusal on some of the area that wasn't covered by the Anglo-Iranian concession, it might be very valuable to the company" (10578). Finding oil in the ground for Cities, said Watson, "was my main interest, and I think Mr. Jones shared my views" (10578).

On August 12, 1952, four days after Watson's secret memo, Jones wrote to Secretary Chapman (Pltf's Ex. CS-95) to tell him of the invitation from Prime Minister Mossadegh and to ascertain the attitude of the United States Government towards his acceptance of it. Although Watson hedged on whether the letter was actually delivered to Chapman, he testified that Jones presented the problem "pretty much the way he has written this letter." (10605). In this letter, Jones suggests that Cities "could successfully undertake the supervision of the rehabilitation and (11939) reactivation of the oil properties in Iran" and that, if Cities were to do so, it would want the "cooperation of the British Government and the Anglo-Iranian Oil Co." He suggests that in the reactivation of the Iranian oil industry and the re-entry of Iranian oil in world markets "lies the only hope for a reasonable payment to the British for their properties in Iran", but that "[t]here may be some reluctance on the part of a number of oil companies that have been recently enjoying added prosperity by reason of the distress of the Anglo-Iranian Oil Co. to cooperate in any settlement of the dispute" (Pltf's Ex. CS-95). Here, then, are repeated the major elements of Watson's plan, viz., operation of the Iranian industry by Cities, exclusion of companies with Middle East interests, and, with cooperation from the British in transportation and marketing, eventual com-

pensation from oil sales to be paid to the British for their expropriated properties.

Jones apparently gave further thought to the problem of transportation while en route to Iran, for he called Watson about it on the telephone from Amsterdam (10631), after which Watson cabled to tell him what Cities' experience had been in taking cargoes from Abadan, and how much oil Cities, itself, could be expected to transport. The cable stated that Cities could obtain tankers to handle 20,000 parrels per day by the first of 1953, 100,000 barrels per day by the end of 1953, and 200,000 barrels per day by the end of 1954 (Pltf's Ex. CS-101).

The next reliable evidence is found in the drafts of the preliminary report to Prime Minister Mossadegh (Pltf's Exs. CS-106, 107). The gist of this report, which may or may not have ever been delivered to Mossadegh (10730), (11940) is that the fields, pipelines, refinery and loading facilities were all well-maintained; that operations could be immediately resumed on a modest scale; that markets could be found for relatively small amounts of oil in the United States; and that, over a period of years Iranian oil could re-establish itself in world markets, but that if the Iranians wished to restore large scale operations in short order, without taking the time and spending the money to replace British equipment and to obtain spare parts, to replace British tankers, and to find new markets, they would have to reach some accommodation with the British. "[A] reasonably prompt and satisfactory solution of the Iranian oil problem is dependent upon some arrangements being made between the Iranian government and the British whereby Iranian petroleum is sold to the

British and transported and sold by them in the previous channels" (Pltf's Exs. CS-106 and 107, at p. 13).

At first blush, this draft report, which, according to Frame, represented his and Heston's thinking more than Jones' and Whetsel's, who were more eager to go ahead without regard to the British (10912), would seem to take Cities out of the Iranian picture, and that is the way Frame now interprets it (10367). In fact, it does not, for Cities remained keenly interested (Pltf's Exs. CS-124, 125A and B; 10823).

This difference of opinion, was a question of degree more than anything else and resulted in an accommodation of views which are expressed in what appears to (11941) be Jones' final report to the Prime Minister dated October 31, 1952 (Pltf's Ex. CS-119). How this accommodation of views was reached can be reconstructed by reading the preliminary draft, dated October 10, 1952 (Pltf's Ex. CS-115), Whetsel's criticism of it, dated October 17, 1952 (Pltf's Ex. CS-116), and the intermediate draft, dated October 27, 1952 (Pltf's Exs. CS-117, 118).

In the final report (Pltf's Ex. CS-119), which is by far the most complete and carefully drawn of the whole series, each of the experts, Frame, Heston, and Whetsel reviews the area within his special competence; each in turn speaks well of the condition of the facilities and the competence of the operating personnel; each reviews the problems which will have to be faced before reactivation of operations can be accomplished on a large scale; and each indicates how American assistance should be utilized. Jones then adds a "General Summary" which emphasizes that any quick reactivation of the Iranian oil industry depends upon selling Iran's crude oil and Abadan's refined

products in the Eastern Hemisphere which, in turn, depends upon British transportation and British markets. He then winds up the report with recommendations for action, which constitute a refined version of Watson's original plan but incorporate for Jones a larger measure of responsibility (Pltf's Ex. CS-94).

To rehabilitate the Iranian operation fully and quickly, Jones recommends that a mixed arbitration (11942) committee of British and Iranian representatives be appointed under the chairmanship of "an experienced U.S. oilman" (presumably himself) to adjust and settle all mutual claims and that, if agreement is reached, "the National Iranian Oil Company of Iran enter into an agreement with an American oil company [presumably Cities Service] to secure the necessary personnel for the reactivation and maintenance of the Iranian oil industry, and to encourage the long range development of Western Hemisphere markets" (Pltf's Ex. CS-119, at pp. 36-37).

For a long term solution, in the event that agreement between the British and the Iranians failed of achievement, Jones recommends that "the National Iranian Oil Company endeavor to enter into a long term agreement with an American oil company [presumably Cities Service] to purchase Iranian crude oil in the maximum amount possible . . . and to secure the necessary personnel, technical assistance and help in the acquisition of the needed repair and replacement materials" Pltf's Ex. CS-119, at p. 37).

In short, whether Iran secured British help in re-establishing her products in Eastern Hemisphere markets, or whether she remained forever deadlocked with the British; whether she went at it the quick, easy way, or took the

slow painful route which Mexico had traveled with the aid, it should be said, of Cities Service, she should have an American oil company manage her facilities. (11943) That company, of course, should be Cities. If the price was right, Jones indicated that perhaps twenty percent of the 1,000,000 barrels per day crude oil productive capacity of Iran could find a market in the United States in the short-term future, and this "could rather quickly supply a substantial increase in revenues to the Iranian government" (Pltf's Ex. CS-119 at p. 31).

That Jones' interest in Iranian oil continued unabated is shown by the letter that he wrote to Abbas Parkhideh, chairman of the Sales Committee of the National Iranian Oil Company on December 22, 1952 (Pltf's Ex. CS-124), in which Jones said that he had been doing everything in his power to help find a solution to the Iranian problem and, in that connection, had conferred with members of the outgoing (Truman) administration and the incoming (Eisenhower) administration, oil executives, publishers, and newspaper people. Another thing that he did, at about that time, was to secure an opinion from the most distinguished lawyer of the day, John W. Davis, to the effect that no purchaser of Iranian oil need fear any legal proceedings by the Anglo-Iranian Oil Co., the British Government or any person claiming under either of them in any American court (Pltf's Ex. CS-137); and it is obvious that he was in touch with the incoming Secretary of State, John Foster Dulles, and the incoming Attorney General, Herbert Brownell, Jr., because he wrote identical letters to each of them on January 6, 1953, enclosing copies of the Davis opinion and tendering his services (Pltf's Exs. CS-125 A & B).

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(11944)

(m) *Jones was not afraid of British retaliation.*

Plaintiff's testimony that Jones was not afraid of British retaliation is corroborated by the report which Albion Ross filed with the New York Times on September 18, 1952, following Jones' interview with the press in Tehran (Pltf's Ex. CS-108) and by Frame who attended the press conference and described the report as "a reasonable statement" (10386).

(n) *Jones told plaintiff, the Iranians and the press that tankers were a serious bottleneck, but that this problem could be overcome in time.*

Plaintiff's testimony that Jones told him that tankers were a serious bottleneck is inferrentially corroborated by Watson's testimony that Jones telephoned to him from Amsterdam on that very subject on the trip over to Iran (10631) and, of course, by Watson's answering cable (Pltf's Ex. CS-101). It is also corroborated by the repeated attention given to the subject in all of the documents, beginning with Watson's secret memo of August 8, 1952 (Pltf's Ex. CS-94), and ending with the final report to Prime Minister Mossadegh, dated October 31, 1952 (Pltf's Ex. CS-119), which dealt with plans for reactivating the Iranian oil industry. Plaintiff's testimony that Jones also emphasized this problem in his talks with the Iranians is corroborated by the Albion Ross report in the New York Times (Pltf's Ex. CS-108).

(o) *Plaintiff's efforts to secure tankers.*

Plaintiff's testimony that he returned to New York ahead of the rest of the party to see what could be (11945) done

to line up tankers is not disputed. Watson may think that that was "a lot of hogwash" (10767), but that just goes to show that Watson did not like to believe what he did not want to believe. It cannot be disputed that plaintiff returned ahead of the rest of the party, and contemporaneous memoranda, given to Cities, show that he went to see Capt. Lemos about tankers and that Lemos indicated that, for a large company and a long term project, it would not be difficult to assemble very substantial tonnage in a reasonably short period of time (SM Ex. B-1010; CS Ex. B-1029).

(p) *Plaintiff was thereupon told that Cities had no interest in Iranian oil.*

Watson concedes that he may have told plaintiff on his return from Iran that Cities had no interest in Iranian oil (10777); and the fact is undeniable that Cities had no further dealings with plaintiff looking towards the acquisition of any interest in Iranian oil (6331). It does not happen to be the fact, however, that Cities lost interest in Iranian oil. Contrary to what plaintiff was told, Jones continued to take a "keen interest" in Iranian oil, as Watson, himself, admitted (10823); a special "Iranian room" was set up at Cities' New York office and put in the charge of a young Iranian woman who looked after the files (10883, 10970); and, in fact, Cities watched with resentment when the Iranian pie was ultimately cut up by the seven international majors in a manner characterized by Cities as creating a monopoly for these companies (Pltf's Ex. CS-40). Watson, himself, conceded that Cities would always have been interested in a long-term contract for Iranian crude oil at the right price (10777).

(11946)

(q) *Cities' interference with plaintiff's efforts to market Iranian oil.*

The interference with plaintiff's sale of 20,000 barrels per day of Iranian crude oil to Richfield, a company owned ⅓ by Cities and ⅓ by Sinclair, was not corroborated by any testimony elicited from Watson at the deposition, but something in the same category, which plaintiff had never had reason to suspect, did come to light. According to a memorandum dated September 24, 1952, produced from Carter's file during the examination of plaintiff (SONJ Ex. C-375), a cable was sent by Carter from Paris on September 21, 1952 to Oscar Chapman, Secretary of the Interior, saying that a cargo of aviation gasoline to be lifted by a U.S. Government tanker at the Abadan refinery had been offered to the United States Air Force, subject to clearance by the State Department. The object of the cable was to solicit Chapman's support in securing the desired clearance from the State Department. The memo goes on to say:

> "Mr. Jones read the cable before we sent it and ok'd its transmission. It was also suggested that Mr. Jones send a cable to Mr. Chapman urging his consideration of furthering the matter with the State Department but Mr. Jones felt that it was better to telephone Mr. Watson and in turn have him call Mr. Chapman concerning this tanker."

In other words, Jones was willing to do more to help Carter in this crisis than Carter had asked: he would personally call Watson. The great man was really putting his shoulder (11947) to the wheel for his friends to whom he owed so much.

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Consider, now, what Jones actually did. Instead of telephoning to Watson to call Chapman in support of the proposed sale, Jones sent a cable to Watson the following day (Pltf's Exs. CS-110 A & B) in which he said:

> "WATSON, AS YOU KNOW, CARTER IS TRYING DESPERATELY TO HOLD ONTO HIS CONTRACT AND HOPES SOMETHING WILL HAPPEN TO MAKE IT POSSIBLE FOR HIM TO PERFORM . . . AMONG OTHER THINGS HE HAS OPTION AND HAS OFFERED U.S. MILITARY CARGO OF AVIATION GASOLINE FROM ABADAN AND THROUGH SOME OF HIS REPRESENTATIVES IS TRYING TO EXERT PRESSURE THROUGH CHAPMAN OR SENATOR JOHNSON TO GET ACCEPTANCE . . . ON MY ARRIVAL HERE HE TOLD ME HE WAS STILL PURSUING IT AND HAD DRAFTED TELEGRAM TO CHAPMAN USING MY NAME. I ASKED HIM TO DELETE ANY REFERENCE TO ME AND TOLD HIM I WOULD COMMUNICATE WITH YOU . . . WOULD LIKE YOU TO REACH CHAPMAN AND TELL HIM I SERIOUSLY QUESTION WISDOM OF SUCH ACTION AND DO NOT WANT TO BE CONNECTED WITH IT IN ANY WAY."

Watson replied by cable the next day that he had delivered Jones' message not only to Chapman, but also to Warren (Pltf's Exs. CS-111 A & B), who was then Deputy Administrator of the Petroleum Administration for Defense (10684), and is now President of Cities.

No one can doubt the importance that the lifting of aviation gasoline by a United States Government tanker from Abadan would have had in relation to plaintiff's contract. Jones knew that Carter considered it desperately important. The psychological impact would have been terrific. Jones knew that Carter was counting on his support. Jones put Carter off by telling him he would telephone to Watson. Instead he cabled Watson

to tell Chapman that he seriously (11948) questioned the wisdom of the transaction; and the transaction died! (9683, 9789).

It would have been very easy for Jones to have disassociated himself from the avgas deal without killing it, but for some reason, "while not wanting to be put in position of interfering with his [Carter's] business" (Pltf's Exs. CS-110 A & B), that is exactly what Jones accomplished behind Carter's back.

Carter, poor gull, never knew what hit him. Two months later, while still pursuing the avgas deal, he confided to Jones that he planned to cable to Anthony Eden, British Foreign Secretary, to approve the lifting of aviation gasoline for military use and asked for Jones' approval. A copy of his note to Jones, found in Carter's papers, is annexed hereto as Exhibit B.

How easy must it have been for Jones subsequently to kill the sale to Richfield! (4272-4). A simple telephone call would have sufficed. The avgas incident proves what kind of a man Jones was.

4. To suggest, as Jones' apologists, Watson and Frame, do, that Jones went to Iran as the unselfish champion of the Free World to save Iran from Soviet Russia (10552) is too facile, too self-serving. Even Watson has to admit that there was also the possibility that something very valuable would come out of it for Cities (10542), and he was plainly peeved by the virtual exclusion of the independents, "we-the-people" (10572), from participation in the final version of the Consortium (10827; 10838-9). To suggest, as Frame does, that he and Heston talked Jones out of undertaking (11949) the reactivation of the Iranian

oil industry at the head of a consortium of American independents (Pltf's Ex. CS-94; 10833) is belied by the documentary evidence (Pltf's Ex. CS-119) and the undisputed fact of Jones' continuing interest (Pltf's Ex. CS-124; 10823). Why Jones, who was posing at the time as the friend of Iran, secretly scuttled plaintiff's propitious opportunity to break the Iranian boycott through the use of United States Government tankers to lift avgas from Abadan does not yet appear. To suggest, as Cities' counsel is so fond of doing, that all we have here is a business opportunity declined by Cities either because Cities found a more attractive business opportunity elsewhere, as, for example, in Kuwait, or simply because Cities did not choose to undertake it, begs the question. Enough has been shown, deponent submits, to indicate that Jones did not voluntarily relinquish so great an opportunity to vault his company into a dominant position in the oil world: he must have been stopped or induced to give up; and plaintiff is entitled, on the record as it now stands, to find out, if he can, how this was brought about. In this connection, it should be noted that Watson did not testify that Jones and others were not in contact with the Cartel Companies, who are defendants in this action, but only that he could not say whether they were or they weren't because he did not know (10602; 10631; 10738-9).

5. Discovery is indispensable in such an antitrust case as this where plaintiff must draw evidence of the conspiracy from his opponents' files. Plaintiff is doubly handicapped here by the death of such important (11950) witnesses as Jones, Lowe, and Whetsel, Cities' executives who played leading roles in the Iranian enterprise. In his

motion of May 8, 1963, plaintiff asked for the production of documents and the examination of witnesses in the following simple terms:

> "1. The production of all documents in the possession or control of Cities Service relating to Cities Service's efforts to obtain an interest in Iranian Oil during the period January 1952 through January 1955 including any written statements by employees setting forth their dealings with plaintiff and his associates in connection with Iranian Oil; and
>
> "2. The examination of Cities Service by oral deposition of Burl S. Watson, A. P. Frame and J. E. Heston."

6. The discovery actually granted by the Court in its order of July 9, 1964, limited plaintiff's discovery to conversations or communications between the deponent and some other Cities Service employee or between Cities and some other defendant.

This order proved inadequate for the following reasons:

(a) Cities interpreted the order to require the production of only those documents which on their face were, themselves, communications between the deponent and other Cities employees or between Cities and another defendant. If a document did not on its face demonstrate that it (11951) was a communication between the deponent and another Cities employee or between deponent and another defendant it was not produced even though the document may have been an adequate summary, aide memoire, diary entry or other statement of Cities' position vis-a-vis the subject matter of this claim. A letter written by Jones to another defendant or a memorandum of conference between Jones and another defendant would not be

produced because Jones was not the deponent. In the same vein, counsel would not produce a communication between one of the deponents and plaintiff or a member of his group, much less a communication between a Cities' employee, other than deponent, and a member of plaintiff's group. Because the witnesses examined were both forgetful and artful, and could not or would not recall more than was to be found in documents to which their attention was directed, a necessary condition precedent to any further discovery must be the fairest document production possible.

(b) In its order of July 9, 1964, the Court imposed a time limitation of June 11, 1952, to October 1, 1952, in respect of communications between Cities and any other defendant and a similar limitation of June 11, 1952, to November 1, 1952, in respect of internal communications between deponent and another Cities employee. At the time the Court heard counsel on the form the order should take, counsel for plaintiff argued that such time limitations were without basis in the record. The Court's reply was that plaintiff should begin with these periods and then, if he could, come back and demonstrate that broader periods were necessary. Based on the discovery thus far it now (11952) appears beyond question that the October 1, and November 1 limitations were inappropriate for the following reasons:

(i) Sometime after November 1, 1952, an "Iranian room" was established at Cities and staffed by an Iranian file clerk to serve as a central file for matters relating to Iran (10883; 10970).

(ii) Although Watson informed plaintiff in October,

1952, that Cities would not be interested in any arrangement involving Iranian oil (6329; 10777), what he meant by the statement was that Cities was not interested in purchasing a few cargoes of crude oil (10777). A long-term contract for Iranian oil would still have been of interest (10777). He added that Jones maintained a "keen interest" in the problem through 1953, and continued to talk with government officials in the United States and Iran about it (10823).

(iii) Frame testified that certain segments of the oil industry had criticized Jones and Cities for making the trip to Iran (10421). He said, however, that no discussions of this criticism took place within the Cities organization prior to November 1, 1952 (10423). Plaintiff testified that at or about the time of the American Petroleum Institute Convention, in November, 1952, Whetsel told him that the "big boys" called Jones in and threatened to cut off his supplies if Cities dealt in Iranian oil (6337). Defendant's counsel refused to permit any inquiry of the witness concerning his knowledge of the events which transpired at the November convention of the A.P.I. (10425).

(11953)

(iv) Watson and Hill testified that Samuel Nakasian approached Cities with various proposals for Cities to participate in a solution to the Iranian oil controversy (10106; 10484). These discussions took place in 1954 (Pltf's Exs. CS-42 & 43).

(v) Various Iranian officials visited Jones, Watson and Frame in the fall of 1952 (10443-45, 10751), and Jones talked with Dr. Saleh, the Iranian Ambassador to the United States (10750), and with Loy Henderson, the

American Ambassador to Iran (10752). He also talked with John Foster Dulles in October and November, 1952 (10752).

(vi) Cities has submitted several documents, dated after November, 1952, in support of its motion for summary judgment, but plaintiff has been denied the opportunity of examining the witnesses with respect to those documents in order to obtain information with which to oppose the motion for summary judgment. These items also serve to demonstrate the continued interest of Jones and Cities in Iranian oil after November 1, 1952, and were submitted by Cities for that purpose. Included among the documents are the following:

—A letter from Jones to Ambassador Henderson, dated November 24, 1952, requesting an interview to discuss the Iranian oil problem;

—A letter from Jones to Parkhideh, dated December 22, 1952, stating that "I am still vitally interested in your problem and have been doing everything in my power to help toward its solution." (Pltf's Ex. CS-124);

(11954)

—A letter from Secretary of the Interior Chapman to Jones, dated December 31, 1952, recounting Jones' activities in the Iranian controversy (Pltf's Ex. CS-96);

—Letters to John Foster Dulles and Herbert Brownell, Jr., dated January 6, 1953, setting forth Jones' proposals for a solution of the Iranian oil problem (Pltf's Exs. CS-125A & B);

—A legal opinion prepared by John W. Davis of Davis,

Polk, Wardwell, Sunderland & Kiendl, dated December 6, 1952, setting forth the rights of a purchaser of Iranian oil in the American courts (Pltf's Ex. CS- 137);

—Letter (apparently by Jones) to Prime Minister Mossadegh, dated July 10, 1953, which noted a "deep and continuing interest" in the controversy and offered proposals for a solution, attached hereto as Exhibit C.

(c) In its order of July 9, 1964, the Court omitted plaintiff's request for the production of written statements prepared by employees setting forth their dealings with plaintiff and his associates in connection with Cities' Iranian oil venture. On the examination it appeared that Heston, the most forgetful of all the Cities' witnesses to date, had in fact prepared such a resumé in the form of a letter which is now in the possession of counsel for Cities (10874). This document was prepared in 1956 only three or four years after the events in question (Pltf's Ex. CS-25A; 10875). Certainly it constitutes better evidence of what happened in 1952 than Heston's hazy recollection in 1964.

(d) During the depositions counsel for Cities repeatedly construed the Court's order of July 9, 1964, (11955) in a manner so arbitrary and narrow as to rob it of any meaning. Thus, for example, all questions in respect of Jones' contacts with Sandberg, a member of the Finance Committee of Royal Dutch Shell, a co-conspirator named in the complaint, were blocked on the ground that the order called only for communications between Cities and another defendant and not between Cities and a co-conspirator! (10692-95; 10901).

(e) Equally arbitrary was the instruction by counsel for Cities to the witness not to answer any questions in respect of Cities' efforts to obtain a participation in any consortium proposal other than the Iranian Oil Consortium as finally constituted (10439, 10451-3; 10821-2, 10825). The documents in this case demonstrate that nearly every effort to reactivate the Iranian oil industry involved the proposed cooperation of several companies. Some of these efforts were labeled consortiums, some were not. Some were labeled consortiums of independents, others were labeled consortiums of the majors, and still other consortiums of majors and independents. It is wholly artificial to say that all such activities must be put beyond the reach of discovery because they were not efforts to obtain a participation in the final vehicle. On this record neither the Court, nor plaintiff—and perhaps not even counsel for Cities—can tell when in time and by what events the Iranian Oil Consortium became sufficiently concrete so that one could seek a participation in it, distinguished from any of the other proposals that were its predecessors or alternatives.

(11956)

(f) Finally, after hearing Watson testify for five days that Cities' main interest was to get a concession for Iranian oil in the ground (Pltf's Ex. CS-94; 10479, 10493, 10552, 10578; 10730), defendant's counsel blocked attempts to inquire whether in fact Cities had actually negotiated for or obtained such a concession (10502, 10845, 10921, 10936-8). Plaintiff testified that during the trip to Iran, Jones had expressed an interest in obtaining a concession in Baluchistan, which was an area not covered by the

former A.I.O.C. concession (6240-1). Counsel for Cities, however, refused to allow plaintiff's counsel to follow this obvious lead, despite Watson's corroboration of plaintiff's testimony that a concession in Iran was Jones' main interest (10578).

7. In view of the death of Jones, Lowe, Shaw and Whetsel, and the inability of Watson, Frame and Heston to recall anything of importance to plaintiff's case which is not spelled out in the documents, it becomes necessary for plaintiff to examine Carter. Carter for over twenty years had been an employee of Cities. In 1952, he was serving Cities and other clients as an independent oil broker from an office in the Cities building (SONJ Ex. W-258; 10488, 10498). Because of his contacts at Cities, it was Carter who played the principal role in all dealings between plaintiff's group and Cities looking to the securing of the invitation from Prime Minister Mossadegh (10479, 10488, 10671). He attended the conferences about which Watson and Frame could recall virtually nothing (10298, 10300, 10305, 10307, 10525). (11957) He attended the dinner at the Echo Lake Country Club on the eve of plaintiff's departure for Iran when plaintiff's compensation by Cities was spelled out (10525): He went to Iran with plaintiff and Nelson on their third trip (Pltf's Ex. CS-98). He remained in Iran throughout the stay of the Cities group and returned with them to Paris (Pltf's Exs. CS-110 A & B). He took care of the reimbursement of plaintiff and Nelson for expenses incurred on the two trips which they made to Iran on Cities' behalf (10616, 10673). He was the prime mover on the avgas deal (Pltf's Exs. CS-110 A & B), and, in that connection, handled many

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of the contacts with the State Department and the Iranian Embassy in Washington (SONJ Ex. W-258). When plaintiff commenced the pending litigation, Carter made common cause with Cities and the other defendants to defeat plaintiff's claim. Not only did Carter turn over to the defendants copies of his papers but, deponent is informed, he also annotated for them the daily transcript of plaintiff's deposition and commented on the exhibits. Plaintiff should now have his own opportunity to determine whether Carter's documents and testimony support or refute Cities' motion for summary judgment. Carter is the only important surviving participant whose testimony has not been taken.

8. To step off plaintiff's discovery in aid of his opposition to Cities' motion for summary judgment, issue by issue, all the while restricting plaintiff to Cities' files and witnesses, is one way of controlling discovery, but, obviously, it is not the most efficient nor is it the fairest. Thus far, Cities' witnesses have been (11958) required to search their recollections only to the extent of accommodating their testimony to the few documents produced from Cities' own files. Faced with documents from the files of Cities' co-conspirators their task may be more difficult for them and more rewarding for plaintiff. With Jones dead and his files thus far not produced to plaintiff, the other logical place to seek documentation of his contacts with the other defendants is through the files and depositions of those defendants. The choice of technique is not between different but equal procedures, but different and unequal. It may well affect the actual testimony received. Jones may well have been less remote and discreet with those he considered his equals in the other defendant com-

panies than he was with his own staff, to whom he confided little that can now be recalled. Other oil company executives may well be less disposed than Watson, Frame and Heston to cast Jones in the role of altruist. By his own admission, and corroborated by Watson, Jones was contacting others in government and in the oil industry in respect of the Iranian oil controversy (Pltf's Ex. CS-95, 124; 10823). One way or the other, plaintiff has the right to discover evidence of Cities' wrongdoing in the files of Cities' co-conspirators before the pending motion is finally decided. Plaintiff should have an opportunity to test with evidence from the rest of the conspiracy Cities' self-serving disclaimers, before this Court accepts them.

9. Cities says it moves for summary judgment because it never joined the Middle East Oil Cartel, did nothing to interfere with plaintiff's efforts to realize (11959) on his business and property and does not want to be subjected any longer to the financial burden of this lawsuit. The flaw in its argument is that it could easily produce its Iranian files and then resist any further discovery if those files sustain the self serving claims heretofore made by Mr. Hill, Cities General Counsel, and the other executives who have been more recently examined. The Court has stated repeatedly that it will permit no harassment by plaintiff of defendants through unwarranted discovery. Cities need have no fear of producing its files, an act which costs it nothing. Plaintiff is not interested in harassment but, if one thing has been more clearly demonstrated by the recent depositions than anything else, it is that hostile witnesses to events which are long past cannot be relied upon unless there are contemporaneous

records with which to confront them. It should also be remembered that the only reliable records that can speak for dead men in a case like this are the files they accumulated in their lifetimes. It is therefore particularly important that access be given to the Iranian files left by Jones, Lowe, Whetsel and Shaw. Yet disclosure of those papers is the one thing Cities has resisted from the day it filed this motion. Surely it will be clear to the Court after reading the testimony of Watson, Frame and Heston in the light of the documents produced thus far that Cities has hidden more than it has revealed of what it did in pursuit of its Iranian oil venture. This Circuit disapproves of trial by affidavit, especially in conspiracy cases where so much depends on inferences to be drawn from (11960) the documents. Full and fair discovery is the way to substitute fact for inference.

WHEREFORE, plaintiff respectfully requests that Cities' motion for summary judgment be denied, or, alternatively, that plaintiff's motion for discovery in aid of its opposition to Cities' motion be granted.

SAMUEL M. LANE
Samuel M. Lane

(Sworn to September 15, 1964.)

Notice of Appeal

(12125)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 110–223

PATRICIA WALDRON, as executrix of the last will and testament of GERALD B. WALDRON, deceased,

Plaintiff,

—against—

BRITISH PETROLEUM CO., LTD., CITIES SERVICE CO., SOCONY MOBIL OIL CO., INC., STANDARD OIL CO. OF CALIFORNIA, STANDARD OIL CO. (NEW JERSEY), TEXACO, INC.,

Defendants.

Sirs:

PLEASE TAKE NOTICE that Patricia Waldron, as executrix of the last will and testament of Gerald B. Waldron, deceased, plaintiff above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the final judgment entered in this action on the 14th

day of September, 1965, in favor of the defendant, Cities Service Co., and against the plaintiff.

Dated: New York, New York
October 13, 1965

Yours, etc.,

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